

**Draft Study Report of the Hingham Planning Board
on Proposed Zoning Amendment to
Transfer A2 Special Permit Granting Authority
March, 2006**

Warrant Article filed: January 9, 2006

Public Hearings: February 13, 2006
February 14, 2006 (Advisory Committee)
February 27, 2006
March 1, 2006
March 6, 2006
March 13, 2006 (scheduled)
March 14, 2006 (Advisory Committee) (scheduled)
March 28, 2006 (Board of Selectmen) (scheduled)
April 10, 2006 (scheduled)

Town Meeting: April 24, 2006

Table of Contents

1. Introduction to Proposed Zoning Amendment
2. Supplement to Draft Study Report of 3-13-06
3. **Warrant Article**
4. Annotated copy of Zoning Bylaw, marked to show proposed changes (Note: All of Section I and affected pages of other Sections of the bylaw are included. Section II is not affected by this proposed zoning amendment.)
5. History of Special Permits and Site Plan Review in Hingham, along with relevant portions of prior Town Meeting minutes
6. Special Permit Granting Authority in other Massachusetts Towns. (Note: The shaded towns are those with which Hingham typically compares itself. The other Massachusetts towns with AAA bond ratings are also noted.)
7. Distribution of responsibilities between the Planning Board and Zoning Board of Appeals
8. Comparison of Planning Board recommendations and Zoning Board of Appeals Decisions
9. Questions posed by Selectmen Mat MacIver and Planning Board response
10. Planning Board Members 1965-2006

Will the Town amend the Zoning By-Law of the Town of Hingham, adopted March 10, 1941, as heretofore amended, as follows:

Item 1: Amend Section I-C by deleting the words “Board of Appeals” each time they appear and substituting therefor the words “Permit Granting Authority”.

Item 2: Amend Section I-D by:

(a) deleting subsection 2.b. in its entirety and substituting therefor the following:

“Special Permit A1 - To hear and decide an application for a Special Permit A1 as provided in this By-Law, only for uses in specified districts which are in harmony with the general purposes and intent of this By-Law and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.”;

(b) in subsection 3 inserting the phrase “A1” after the words “Special Permit” in the first sentence thereof;

(c) in subsection 3 deleting the second paragraph thereof in its entirety; and

(d) deleting subsection 4 thereof in its entirety.

Item 3: Delete Section I-F in its entirety and substituting therefor the following:

“I-F Special Permits

1. Special Permit Granting Authority

Effective as of April __, 2006, the Board of Appeals shall be the Special Permit Granting Authority for any use requiring a Special Permit A1 under this By-Law and the Planning Board shall be the Special Permit Granting Authority for any use requiring a Special Permit A2 under this By-Law, including all modifications of any Special Permit A2 issued prior to such effective date. Two associate members of the Planning Board may be appointed by the Board of Selectmen to act on Special Permit A2 applications if necessary. No member of the Planning Board shall act on any matter in which the member may have a personal or financial interest, and in such event, an associate member shall be designated to serve on the Planning Board and to act upon the matter.

2. Procedures for Application, Hearing and Decision

Each application for a Special Permit shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Special Permit Granting Authority. The Special Permit Granting Authority shall hold a public hearing on the application, as provided in Massachusetts General

Laws Chapter 40A, within 65 days of the filing of a complete application and shall render a decision within ninety (90) days from the close of the public hearing. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the permit applied for.

The Special Permit Granting Authority may grant, grant with conditions, deny, or grant leave to withdraw an application for a Special Permit. A copy of the decision shall be filed with the Town Clerk and the Planning Board (if granted by the Board of Appeals), and shall be furnished the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.

The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

3. Review Criteria

In reviewing each such application the Special Permit Granting Authority shall study the site plan with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally, including its amenities.

The Special Permit Granting Authority shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity, as determined by the Special Permit Granting Authority. This limitation shall be imposed upon the proposed development regardless of the intensity of development otherwise permitted by Section III-A and Section IV-A.

4. Costs

The costs of professional consultants, experts or assistance incurred by the Board of Appeals or Planning Board shall be borne by the applicant. However, the costs to be paid by the applicant shall not exceed the reasonable and usual charges of said consultants or other experts for such services nor shall they exceed the greater of \$10,000 or one percent (1%) of the total projected cost of the project (inclusive of engineering, architectural, and legal fees and other soft costs). The applicant shall deposit with his application an appropriate portion of the anticipated review costs as determined by the Boards' administrators as security for payment on such costs. No occupancy permit may be issued in accordance with Section I-C of this By-Law until the applicant has paid or reimbursed the Town for all such costs.

5. Approval Criteria

An applicant is not entitled to a Special Permit. The Special Permit Granting Authority may approve such application for a Special Permit if it finds that, in its judgment:

- a. use of the site is in harmony with the general purpose and intent of this By-Law;
- b. the proposed use complies with the purposes and standards of the relevant specific sections of this By-Law;
- c. the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area;
- d. the use as developed and operated will create positive impacts or potential adverse impacts will be mitigated;
- e. there will be no nuisance or serious hazard to vehicles or pedestrians;
- f. adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use; and
- g. the proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.

6. A Special Permit shall lapse within a two (2) year period or a shorter period if so specified by the Special Permit Granting Authority, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within the period except for good cause.

7. Repetitive Petitions

No Special Permit A2 application which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless all but one of the members of the Planning Board, after notice is given to parties in interest of the time and place of the proceedings to consider consent, finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records.”

Item 4: Delete Section I-G in its entirety and replace therefor the following:

“I-G Special Permits with Site Plan Review (A2)

Site plan review is required for all Special Permits designated A2 in this By-Law. Such site plan review is conducted by the Planning Board as the Special Permit Granting Authority. Each application to the Planning Board for a Special Permit A2 must include all the information and plans required for site plan review. (See Section I-I,

3.) The Planning Board shall transmit forthwith a copy of the application to and may consult with other Town agencies, boards and officials as it deems appropriate. The Planning Board shall review and investigate each such application in accordance with the criteria and standards for site plan review listed in Section I-I”

Item 5: Amend Section I-I by:

- (a) deleting subsection 2 in its entirety and renumbering the subsequent subsections accordingly; and
- (b) amending renumbered subsection 3 (Review Standards) by deleting the words “and Zoning Board of Appeals” in the first sentence thereof.

Item 6: Delete Section I-J in its entirety and substitute therefor the following:

“I-J Fees

At the time of filing an Appeal or an application for a Variance or a Special Permit, the applicant shall pay a fee to the Town Clerk, according to the following schedule:

- a. single-family residential Variance or Appeal \$200.00;
- b. application for sign under Section V-B \$100.00; and
- c. all other applications \$300.00.

Agencies of the Town are exempt from all filing fee requirements.”

Item 7: Amend Section III of the By-Law by:

- (a) amending Section III-A under “A2” to delete the words “by the Board of Appeals as provided in Section I-G” and substituting therefor the words “by the Planning Board as provided in Sections I-F and I-G” and by deleting the words “the Board of Appeals in the last sentence thereof and substituting therefor the words “a Special Permit Granting Authority”;
- (b) amending Section III-E by deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Special Permit Granting Authority”;
- (c) amending Section III-G, 5 by deleting the words “Planning Board and/or the Board of Appeals” wherever they appear and substituting therefor the words “Special Permit Granting Authority”;
- (d) amending Section III-G, 6 by deleting the words “Board of Appeals” wherever they appear and substituting therefor the words “Planning Board”; and
- (e) amending Section III-I, 1(b) by deleting the words “Board of Appeals” and substituting therefor the words “Planning Board”.

Item 8: Amend Section IV of the By-Law by:

- (a) in Section IV-B, 10.e. delete the words “the Board of Appeals” wherever they appear and substitute therefor the words “the Permit Granting Authority”;
- (b) in Section IV-D delete the phrase “A3” wherever it appears and substitute therefore the phrase “A2”;
- (c) in Section IV-E delete the words “Board of Appeals” wherever they appear and substitute therefor the words “Planning Board”;
- (d) in Section IV-F delete the words “Board of Appeals” and “Board” wherever they appear and substitute therefor the words “Planning Board”; and
- (e) in Section IV-G, make the following changes:
 - i. in subsection 1, change the words “Special Permit” to “Special Permit A2” and the words “Board of Appeals” to “Planning Board”.
 - ii. in subsection 2, change the words “Board of Appeals” to “Planning Board”, change the words “Special Permit” to “Special Permit A2”, and delete paragraph “a” and re-designate the current paragraph “b” as “a”.
 - iii. in subsection 3, paragraph 2, delete the words “both” and “and the Board of Appeals”.
 - iv. delete the words “the Board” wherever they appear and substitute therefor the words “ the Planning Board”;
 - v. in subsection 5, delete the provisions of paragraph “e” in their entirety, and replace the words “Intentionally Omitted” therefor.
 - vi. in subsection 5.f, delete the words “upon receipt of the report of the Planning Board, but, in any case,”.
 - vii. in subsection 12.b, delete the words “, the Planning Board and the Board of Appeals” and substitute therefor the words “and the Planning Board”.

Item 9: Amend Section V of the By-Law by:

- (a) in Section V-A deleting the words “Zoning Board of Appeals” wherever they appear and substituting therefor the words “Planning Board”;
- (b) in Section V-C deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Planning Board” and amending the name of subsection 2 thereof from “Application and Reference to Planning Board” to “Application”;

- (c) in Section V-E deleting the words “Board of Appeals” and “Board” wherever they appear and substituting therefor the words “Planning Board”;
- (d) in Section V-F deleting subsection “h” in its entirety and relettering subsection (i) to (h) accordingly;
- (e) in Section V-G, 4.g. deleting the words “Zoning Board of Appeals” and substituting therefor the words “Planning Board”; and
- (f) in the second paragraph of Section V-G, 4, j., deleting the phrase “or Board of Appeals”.

Item 10: Amend Section VI by:

- (a) in the definitions of “Nonconforming Structure” and “Nonconforming Use” substitute the words “Permit Granting Authority” for “Board of Appeals”;
- (b) inserting the following definition after the definition of the term “Nonconforming Use”: “Permit Granting Authority – the Board of Appeals under Section I-D or the Planning Board under Section I-F, as designated in this By-Law”; and
- (c) inserting the following definition after the definition of the term “Slope”: “Special Permit Granting Authority – the Board of Appeals or the Planning Board as designated in Section I-F, 1 of this By-Law.”

Item 11: If Warrant Article ____ (Parking for Commercial/Residential Buildings) is adopted by Town Meeting, change “Board of Appeals” to “Planning Board”.

or act on any matter related thereto?

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SECTION I

Administration and Procedure

I-A Authority and Purpose

1. This By-Law shall be known and may be cited as the Zoning By-Law of the Town of Hingham and is adopted by virtue of and pursuant to the provisions of Massachusetts General Laws Chapter 40A as amended by Chapter 808 of the Acts of 1975, as amended.
2. The purposes of the By-Law include, but are not limited to, the following: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic, and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space, and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the Master Plan, if any, adopted by the Planning Board and the comprehensive plan, if any, of the regional planning agency; and, to preserve and increase amenities. Regulations may be promulgated in accordance with the provisions of Massachusetts General Laws Chapter 40A, as amended, in order to fulfill the purposes of this By-Law.
3. Regulations adopted pursuant to these purposes may include, but are not limited to, restricting, prohibiting, permitting, or regulating the use, alteration, size, bulk height, area, and location of buildings and structures and the use of premises in the Town of Hingham.

I-B Basic Requirements

All buildings or structures hereafter erected, reconstructed, altered, enlarged or moved, or use of premises in the Town of Hingham, shall be in conformity with the provisions of this By-Law. Any building, structure, or land shall not be used for any purpose or in any manner other than is permitted in the district in which such building, structure or land is located.

Any use not specifically provided for in a district herein shall be deemed to be prohibited. In accordance with Massachusetts General Laws Chapter 40A, and notwithstanding any provisions to the contrary, this By-Law shall not prohibit, regulate, or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased (1) by the Commonwealth of Massachusetts or any of its agencies, subdivisions, or bodies politic or (2) by a religious sect or denomination, or (3) by a nonprofit educational corporation, provided however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking, and building coverage requirements in accordance with the provisions of this By-Law. Such uses shall not be exempt from the general or specific regulations of this By-Law other than use regulations.

No use will be permitted which will produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectionable effluent, electrical interference or substantial erosion or flooding which may affect or impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the neighborhood.

No land within any use district in the Town of Hingham may be used for the collection, treatment, storage, burial incineration of radioactive waste, including but not limited to, wastes classified as low-level radioactive waste.

I-C Enforcement

Warrant Article
Item 1

Except as otherwise provided, this By-Law shall be enforced by the Building Commissioner. No application of any kind of plans or specifications or intended uses shall be approved by the Commissioner unless they are in all respects in conformity with this By-Law.

1. No building shall be constructed, altered or moved and no use of land or building shall be begun or changed without a permit having been issued by the Building Commissioner. No such permit shall be issued until such construction, alteration or use, as proposed, shall comply in all respects with this By-Law or with a decision of the ~~Board of Appeals~~ Permit Granting Authority. Any application for such a permit shall be accompanied by a plan, accurately drawn, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the locations of new buildings to be constructed, together with the lines within which all buildings and structures are to be erected, the existing and proposed use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this By-Law. A record of all applications, plans, and permits shall be kept on file by the Building Commissioner. Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction authorized by this permit is made or commenced within a period of not more than six (6) months after the issuance of the permit and, in cases involving construction, unless such construction is carried through to completion as continuously and expeditiously as is reasonable.
2. No premises and no building erected, altered, or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit, signed by the Building Commissioner. Such permit shall not be issued until the premises or building and their uses, and the uses thereto, comply with this By-Law. A record of all applications and occupancy permits shall be kept on file by the Building Commissioner.

Definition
created in
Warrant
Article Item
10(b)

In town house, garden apartment and apartment house developments, and/or any other multi-unit developments, an occupancy permit shall not be issued by the Building Commissioner for more than 85% of the dwelling units of the approved development plan or of the approved stage of the development plan until all details of the approved development plan or of the approved stage of the development plans shall have been fully completed. Details of the approved development plans shall not be considered fully completed until the Building Commissioner has presented to the ~~Board of Appeals~~ Permit Granting Authority a written report by the author of the plans (designer architect, engineer, site planner, etc.) or the successor to such author that the work has been completed in accordance with the approved

development plan or approved stage of the development plan and until the Building Commissioner shall have submitted his report pertaining to his inspection of the buildings and premises to the ~~Board of Appeals~~Permit Granting Authority.

3. Any person violating any provision of this By-Law shall be subject to a fine not exceeding one hundred dollars (\$100.00) for each violation. Each day during which any violation exists shall constitute a separate offense.

Whoever violates any provision of Article V-B of this By-Law may, at the discretion of the Building Commissioner or a police officer of the Town of Hingham acting at the direction of the Building Commissioner, be subjected to the imposition of a penalty through non-criminal process in accordance with Massachusetts General Laws Chapter 40, Section 21D. If the violation continues for seven days after the issuance of a written warning for a violation, a penalty of \$50.00 may be imposed for the second and subsequent violations of said Article V-B. The availability of non-criminal process and penalties under this paragraph shall not preclude the use of criminal process or other means of enforcement. Penalties specified shall apply to each offense, and each day during which any violation exists shall constitute a separate offense.

I-D Board of Appeals

Warrant Article
Item 2

1. Establishment

In accordance with the provisions of Chapter 40A of the Massachusetts General Laws, a Board of Appeals consisting of three (3) citizens of the Town who shall be qualified by education or experience to pass upon matters which may be brought before them shall be appointed by the Selectmen for a term of three years, the term of one member expiring each year. At least two associates shall be appointed in a like manner. No member of the Board of Appeals shall act on any matter in which the member may have a personal or financial interest, and in such event, an associate member shall be designated to serve on the Board and to act upon the matter. Each member or associate shall be paid three dollars (\$3.00) for each hearing attended.

2. Powers

The Board of Appeals shall have the following powers which shall in no way conflict with the regulations as contained in this By-Law.

a. Appeals - To hear and decide an Appeal taken

1. by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from the Building Commissioner under the provisions of Massachusetts General Laws Chapter 40A, or of this By-law,
2. by the regional planning agency in which area the Town is situated, or
3. by any person, including an officer or board of the Town of Hingham or of any abutting municipality, aggrieved by an order or decision of the Building Commissioner, in violation of any Provision of Massachusetts General Laws Chapter 40A, or of this By-Law.

- b. ~~Special Permit~~sA1 - To hear and decide an application for a Special Permit A1 as provided in this By-Law, only for uses in specified districts which are in harmony with the general purposes and intent of this By-Law and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use. ~~A Special Permit shall lapse within a two (2) year period or a shorter period if so specified by the~~

Moved to
I-F, 6

~~Board, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within the period except for good cause.~~

- c. Variances - To hear and decide a petition with respect to particular land or structures for a Variance from the terms of this By-Law, including a Variance authorizing a use or activity not otherwise permitted in a particular zoning district, where the Board specifically finds that owing to circumstances relating to soil conditions, shape, or topography of such land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of this provision of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this By-Law. The Board of Appeals may impose conditions, safeguards, and limitations, both of time and of use, including the continued existence of any particular structure but excluding any condition, safeguard, or limitations based upon the continued ownership of the land or structure to which the Variance pertains by the applicant, petitioner, or any owner. If the rights authorized by a Variance are not exercised within the one (1) year of the date of the authorization, they shall lapse and may be re-established only after a new notice and hearing.

3. Procedure

In the case of every Appeal made to the Board of Appeals, every petition for a Variance, and every application for a Special Permit A1 to said Board under the provisions of this By-Law, the Board shall hold a public hearing thereon. Notice of the hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and by posting said notice in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing. Notice shall be sent by mail, postage prepaid, to parties in interest including the petitioner, abutters, owners of land directly opposite on any public street or way, abutters of abutters within three hundred (300) feet of the property line of the petitioner, as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the Planning Board and the Planning Boards of every abutting municipality. The Assessors shall certify to the Board the name and addresses of the parties in interest. In the case of an Appeal from a decision of the Building Commissioner and in the case of a Variance, a petition shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty-five (65) days of the receipt of the petition from the Town Clerk and shall render a decision within one hundred (100) days from the date of filing. Failure by the Board to take final action upon a petition within the said one hundred (100) day period shall be deemed to be a grant of the Appeal or Variance applied for.

~~In the case of a Special Permit, an application shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board shall hold a public hearing within sixty five (65) days of the filing and shall render a decision within ninety (90) days from the close of the public hearing. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the permit applied for.~~

Moved to
I-F, 2

4. Fees

~~At the time of filing, the applicant shall pay a fee to the Town Clerk, according to the following schedule:~~

- ~~a. single family residential Variance or Appeal \$200.00;~~
- ~~b. application for sign under Section V-B \$100.00; and~~
- ~~c. all other applications \$300.00.~~

~~Agencies of the Town are exempt from all filing fee requirements.~~

Moved to I-J

5. Repetitive Petitions

Board of Appeals Decisions - No appeal, application, or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two (2) years after the date of final unfavorable action unless (1) all but one of the members of the Planning Board consent to a re-petition after notice is given to parties in interest of the time and place of the proceedings to consider consent and (2) the Board of Appeals by unanimous vote finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records, and similarly consents.

I-E Zoning Administrator

In accordance with such qualifications as may be established by the Board of Selectmen, the Board of Appeals shall appoint, from time to time, a Zoning Administrator, to serve at its pleasure, which appointment shall be subject to confirmation by the Board of Selectmen. Said Administrator shall be empowered to carry out such duties and powers as may be delegated by the Board of Appeals in accordance with Massachusetts General Laws Chapter 40A, Section 13, which statute shall govern the rights of aggrieved persons.

I-F Special Permits ~~A1 and A2~~

Warrant Article
Item 3

1. Special Permit Granting Authority

Effective as of April , 2006, the Board of Appeals shall be the Special Permit Granting Authority for any use requiring a Special Permit A1 under this By-Law and the Planning Board shall be the Special Permit Granting Authority for any use requiring a Special Permit A2 under this By-Law, including all modifications of any Special Permit A2 issued prior to such effective date. One associate member of the Planning Board may be appointed by the Board of Selectmen to act on Special Permit A2 applications if necessary. No member of the Planning Board shall act on any matter in which the member may have a personal or financial interest, and in such event, an associate member shall be designated to serve on the Planning Board and to act upon the matter.

New
Section

12. Procedures for Application, Hearing and Decision

Each application to the Board of Appeals for a Special Permit A1 or A2 shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the ~~Special Board of Appeals~~ Permit Granting Authority. The ~~Special Board of Appeals~~ Permit Granting Authority shall hold a public hearing on the application, as provided in Massachusetts General Laws Chapter 40A, within 65 days of the filing of a complete application and shall render a decision within ninety (90) days from the close of the public hearing. Failure to take action within the said ninety (90) day period shall be deemed to be a grant of the permit applied for.

Moved
from I-D, 3

The ~~Special Board of Appeals~~Permit Granting Authority may grant, grant with conditions, deny, or grant leave to withdraw an application for a Special Permit. A copy of the decision shall be filed with the Town Clerk and the Planning Board (if granted by the Board of Appeals), and shall be furnished the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.

Definition
created in
Warrant
Article
item 10(c)

The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

3. Review Criteria

In reviewing each such application the Special Permit Granting Authority shall study the site plan with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally, including its amenities. In addition to making the Special Permit findings, the Special Permit Granting Authority shall consider the specific site plan review items listed in Section I-I, 4.

Moved
from I-G, 2

The Special Permit Granting Authority shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity, as determined by the Special Permit Granting Authority. This limitation shall be imposed upon the proposed development regardless of the intensity of development otherwise permitted by Section III-A and Section IV-A.

4. Costs

The costs of professional consultants, experts or assistance incurred by the Board of Appeals or Planning Board shall be borne by the applicant. However, the costs to be paid by the applicant shall not exceed the reasonable and usual charges of said consultants or other experts for such services nor shall they exceed the greater of \$10,000 or one percent (1%) of the total projected cost of the project (inclusive of engineering, architectural, and legal fees and other soft costs). The applicant shall deposit with his application an appropriate portion of the anticipated review costs as determined by the Boards' administrators as security for payment on such costs. No occupancy permit may be issued in accordance with Section I-C of this By-Law until the applicant has paid or reimbursed the Town for all such costs.

Moved
from I-I, 2

25. Approval Criteria

An applicant is not entitled to a Special Permit ~~or a Special Permit with site plan review~~. The ~~Special Board of Appeals~~Permit Granting Authority may approve such application for a Special Permit ~~A1 or A2~~ if it finds that, in its judgment:

- a. use of the site is in harmony with the general purpose and intent of this By-Law;
- b. the proposed use complies with the purposes and standards of the relevant specific sections of this By-Law;
- c. the specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area;
- d. the use as developed and operated will create positive impacts or potential adverse impacts will be mitigated;
- e. there will be no nuisance or serious hazard to vehicles or pedestrians;
- f. adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use; and

- g. the proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.

6. A Special Permit shall lapse within a two (2) year period or a shorter period if so specified by the Special Permit Granting Authority, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17, and if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun within the period except for good cause.

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I-D, 2,b

7. Repetitive Petitions

No Special Permit A2 application which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless all but one of the members of the Planning Board, after notice is given to parties in interest of the time and place of the proceedings to consider consent, finds specific and material changes in the conditions upon which the previous unfavorable action was based, describes such changes in its records.

New for A2
special
permits by
PB; mirrors
I-D, 5

I-G Special Permits with Site Plan Review (A2)

Warrant Article
Item 4

Site plan review is required for all Special Permits designated A2 in this By-Law. Such site plan review is conducted by the ~~Board of Appeals~~Planning Board as the Special Permit A2 granting authority.

~~1. Review Procedure~~

~~Each application to the Board of Appeals~~Planning Board for a Special Permit A2 must include all the information and plans required for site plan review. (See Section I-I, 3.) ~~The Board of Appeals~~Planning Board shall transmit forthwith a copy of the application to the ~~Planning Board for review and recommendation and~~ may consult with other Town agencies, boards and officials as it deems appropriate. The Planning Board shall review and investigate each such application in accordance with the criteria and standards for site plan review listed in Section I-I, 4. ~~and make a report with recommendation to the Zoning Board of Appeals prior to the public hearing. Failure to so report shall not preclude action without such report by the Board of Appeals. The Board shall not make a decision on an application until the Planning Board has submitted its report, or if no report is received, until 35 days have elapsed since the date of transmittal of the application to the Planning Board.~~

~~2. Board of Appeals Review Criteria~~

~~In reviewing each such application the Board of Appeals shall study the site plan with reference to the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally, including its amenities. In addition to making the Special Permit findings, the Board shall consider the specific site plan review items listed in Section I-I, 4.~~

~~The Board of Appeals shall limit the proposed development so that its impact on each of the municipal services, ways, utilities and other resources does not exceed its existing design capacity, as determined by the Board of Appeals. This limitation shall~~

Moved to
I-F, 3

be imposed upon the proposed development regardless of the intensity of development otherwise permitted by Section III A and Section IV A.

I-H Building Permits with Site Plan Review

1. Application Procedure
Upon receipt of a Building Permit application for work under Special Requirement 6 of Section IV-B the Building Commissioner shall transmit forthwith a copy of the application with all the attached plans to the Planning Board.
2. Planning Board Review and Recommendation
The Planning Board shall review and investigate each such application in accordance with the criteria and standards for site plan review listed in Section I-I, 4, and make a report with recommendation to the Building Commissioner within thirty days of its receipt of the application. The recommendation on the project or site plan, or expansion or alteration thereof, shall be endorsed by the Planning Board in writing on the plan or permit application, with such conditions as the Board may impose. The Building Commissioner may act without such report after the thirty-day period.

I-I Site Plan Review

Warrant Article
Item 5

1. Purpose
The purpose of this Section is to provide a comprehensive procedure for development projects to ensure compliance with the provisions of the Zoning By-Law, to minimize adverse impacts of such development, and to promote development which is harmonious with surrounding areas.
2. ~~Costs~~
~~The costs of professional consultants, experts or assistance incurred by the Board of Appeals or Planning Board shall be borne by the applicant. However, the costs to be paid by the applicant shall not exceed the reasonable and usual charges of said consultants or other experts for such services nor shall they exceed the greater of \$10,000 or one percent (1%) of the total projected cost of the project (inclusive of engineering, architectural, and legal fees and other soft costs). The applicant shall deposit with his application an appropriate portion of the anticipated review costs as determined by the Boards' administrators as security for payment on such costs. No occupancy permit may be issued in accordance with Section I C of this By Law until the applicant has paid or reimbursed the Town for all such costs.~~
3. Submittal Requirements
Each application for a Building Permit or Special Permit with site plan review shall include the following information prepared by qualified registered professionals, either shown on wet-stamped and signed plans or other supporting documentation:
 - a. locus plan; diagram and statement of the ownership, area, dimensions, boundaries and principal elevations of the subject property; location of structures within 100 feet of property line;
 - b. scaled and dimensioned plan of the location and footprint of existing and proposed buildings and structures; if applicable, building elevations and floor layouts;
 - c. if applicable, plan showing proposed circulation of traffic within the development and in all adjacent public ways; dimensioned plan of loading and parking areas,

Moved to
I-F, 4

- aisles and driveways; plan with detail sheets if appropriate, profile and representative cross sections of proposed driveways and parking areas;
- d. analysis of compliance with all relevant dimensional provisions of this By-Law;
- e. detailed information on utilities, lighting, landscaping, refuse storage and removal;
- f. grading plan, drainage analysis and traffic analysis, as applicable;
- g. analysis of the capacity of Town soils, water supply, ways and services to absorb the impact of the proposed development;
- h. analysis of compliance with the most current versions of the Massachusetts Department of Environmental Protection Stormwater Management Policy and Standards, and Massachusetts Erosion Sediment and Control Guidelines; and
- i. such other materials necessary to enable Town boards to make a positive determination on the proposed development.

43. Review Standards

In conducting a site plan review, the Planning Board and Zoning Board of Appeals shall consider the following:

- a. protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, fire hydrant locations, sound and sight buffers and preservation of views, light, and air;
- b. convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets; the location of driveway openings in relation to traffic or to adjacent streets, taking account of grades, sight distances and distances between such driveway entrances, exits and the nearest existing street or highway intersections; sufficiency of access for service, utility and emergency vehicles;
- c. adequacy of the arrangement of parking, loading spaces and traffic patterns in relation to the proposed uses of the premises; compliance with the off-street parking requirements of this By-Law;
- d. assurance of positive stormwater drainage and snow-melt run-off from buildings, driveways and from all parking and loading areas on the site;
- e. adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- f. prevention or mitigation of adverse impacts on the Town's resources;
- g. prevention of erosion, sedimentation and stormwater pollution and management problems through site design and erosion controls in accordance with the most current versions of the Massachusetts Department of Environmental Protection's Stormwater Management Policy and Standards, and Massachusetts Erosion and Sediment Control Guidelines; and
- h. protection of natural and historic features.

Warrant Article
Item 6

I-J Fees

At the time of filing an Appeal or an application for a Variance or a Special Permit, the applicant shall pay a fee to the Town Clerk, according to the following schedule:

- a. single-family residential Variance or Appeal \$200.00;
- b. application for sign under Section V-B \$100.00; and
- c. all other applications \$300.00.

Agencies of the Town are exempt from all filing fee requirements.

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I-D, 4

~~Planning Board~~ Special Permit A3

1. Powers

- The Planning Board shall have the power to hear and decide an application for a Special Permit A3 for uses in specified districts that are in harmony with the general purposes and intent of this By Law. A Special Permit A3 shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use. Except for good cause, a Special Permit A3 shall lapse in two (2) years after the date of issue, or such shorter period as may be specified by the Planning Board, which shall not include any time required to pursue or await the determination of an appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17.

2. Fees

- The provisions of Section I D, 4 of this By Law shall apply to all applications for a Special Permit A3.

3. Repetitive Petitions

- The provisions of Section I D, 5 of this By Law shall apply to all applications for a Special Permit A3, provided, however, that in connection with an application for a Special Permit A3, all references to the Board of Appeals in such Section shall be deemed to refer to the Planning Board.

4. Procedures for Application, Hearing and Decision

- Each application to the Planning Board for a Special Permit A3 shall be filed with the Town Clerk, with duplicate copies submitted in accordance with the regulations of the Planning Board. The Planning Board shall hold a public hearing on the application, as provided in the Massachusetts General Laws Chapter 40A, within 65 days of the filing of a complete application.
- The Planning Board may grant, grant with conditions, deny, or grant leave to withdraw, an application for a Special Permit A3. A copy of the decision may be filed with the Town Clerk and the Planning Board, and shall be furnished the applicant and property owner, in accordance with Massachusetts General Laws Chapter 40A.
- The applicant shall be responsible for filing a certified copy of the decision in the Registry of Deeds or, where applicable, in the Land Court. Prior to the issuance of a Building Permit, the applicant shall present to the Building Commissioner evidence of such recording.

5. Approval Criteria

- An applicant is not entitled to a Special Permit A3. The Planning Board may approve such application for a Special Permit A3 if it finds that, in its judgment, the proposed use is consistent with the criteria set forth in Section I F, 2 (a) through (g) of this By Law.

I-K Amendment

This By-Law may be amended from time to time at an annual or special Town Meeting. An amendment may be initiated by the submission to the Board of Selectmen of a proposed change by the Board of Selectmen, the Board of Appeals, an individual owning land in the Town to be affected by the amendment, registered voters of the Town

pursuant to Massachusetts General Laws Chapter 39, Section 10, the Planning Board, or the regional planning agency. Within fourteen (14) days of the receipt of a proposed change, the Board of Selectmen shall submit it to the Planning Board for review and a report. A public hearing be held by the Board within sixty-five (65) days after the proposed change is submitted to the Board.

1. Repetitive Amendments

No proposed change in this By-Law which has been unfavorably acted upon at the Town Meeting shall be considered by the Town Meeting within two years after the date of such unfavorable action unless adoption of the proposed change is recommended in the final report of the Planning Board to the Town Meeting.

I-L Validity

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.

I-M Effective Date

The effective date of an amendment to this By-Law shall be the date on which such amendment was adopted by a favorable two-thirds (2/3) vote of Town Meeting subject to its publication in a Town bulletin or pamphlet and posting or publication in a newspaper as provided in Massachusetts General Laws Chapter 40, Section 32.

SECTION III

Use Regulations

III-A Schedule of Uses

Warrant Article
Item 7(a)

No building, structure, or land shall be used for any purpose or in any manner other than as set forth in the Schedule of Uses, Section III-A of this By-Law. The symbols "P", "A", and "O" as therein used having the following application:

P - Use permitted

A1 - Use allowed under a Special Permit by the Board of Appeals as provided in Section I-F

A2 - Use allowed under a Special Permit by the ~~Board of Appeals~~ Planning Board as provided in Sections I-F and I-G and subject to a site plan review as provided in Section I-I

O - Use prohibited

Permitted uses and uses allowed by the ~~Board of Appeals~~ Special Permit Granting Authority shall be in conformity with all dimensional requirements, off-street parking requirements, and all other applicable requirements of this By-Law. Allowed uses for projects authorized by a Mixed Use Special Permit under Section IV-G are set forth in Section IV-G.

III-B Special Conditions to Schedule of Uses

Special conditions shall apply as shown in Section III-A to such uses as are designated therein as being subject to one or more of the following special conditions:

1. The minimum lot size on which such use will be permitted shall be 2 acres. All buildings not used for residence shall be placed a minimum of 40 feet from the front, side and rear lot lines.
2. No part of such use shall be located within 1,000 feet of any residence district.
3. All setback requirements of the district in which the use subject to this special condition is located shall prevail and, in addition, no filling pump or any structure may be located within 25 feet of a property line or public way. A minimum of 1,000 square feet of paved area shall be provided for each filling pump. No more than two driveways of 26 foot width each shall be permitted per street. Curbing shall be installed along each line except at driveways.
4. Intentionally left blank.
5. For properties zoned Industrial Park or Office Park that are included in the South Hingham Development Overlay District, refer to Section III-E, South Hingham Development Overlay District, for additional information regarding uses and dimensional criteria.
6. Subject to issuance of a temporary permit by the Building Commissioner pursuant to published regulations establishing hours of operation, size of lot, number and location of parking spaces, lighting, access and signage.
7. For parcels zoned Business A included in the Downtown Hingham Overlay District, refer to Section III-G, Downtown Hingham Overlay District, for additional information regarding permitted and prohibited uses and Design Review. Commercial/Residential Buildings are permitted only in the Downtown Hingham Overlay District. Leased parking for Commercial/Residential Buildings is permitted only in conjunction with a Special Permit A2 for a Commercial/Residential Building and subject to the requirements of Section III-G, 6.

III-E South Hingham Development Overlay District

1. Purpose
To assist the Town of Hingham in providing safe and efficient public infrastructure consistent with future growth potential in a designated South Hingham Development Overlay District (Overlay District).
2. Objectives
 - a. Encourage planning and development which will maintain the economic viability of businesses within the Overlay District.
 - b. Encourage future development that links major non-residential roadways in the Overlay District.
 - c. Minimize commercial and industrial related traffic impacts on surrounding residential neighborhoods.
 - d. Support future development that balances the needs of abutting neighborhoods and environmental protection with the long-term fiscal needs of the community.
3. Applicability
Only areas zoned Industrial Park or Office Park shown on the Hingham Zoning Map and within the South Hingham Development Overlay District shall be subject to the requirements of this Section.
4. Special Permit Authority
For those projects within the South Hingham Development Overlay District requiring a Special Permit the ~~Board of Appeals (Board)~~Special Permit Granting Authority may grant a Special Permit consistent with the requirements of this Section, Massachusetts General Laws Chapter 40A, Section 9, and any regulations which the ~~Board~~Special Permit Granting Authority may adopt for carrying out its requirements.
5. Permitted Use
The following uses are permitted within the South Hingham Development Overlay District where the underlying zone is Industrial Park subject to the conditions of item (c) in the table below:

INDUSTRIAL PARK DISTRICT

- | | |
|----------------|---|
| a. As-of-Right | |
| Section III-A | 3.1 Church or other place of worship, etc. |
| Section III-A | 3.2 Schools or playgrounds |
| Section III-A | 3.3 Schools - Private, including dormitories accessory thereto |
| Section III-A | 3.4 Nursery school or other use for day care of children, or a privately organized camp, etc. |
| Section III-A | 3.5 Public buildings and premises for government use, etc. |
| Section III-A | 3.10 Public-utility buildings and structures |
| Section III-A | 4.8 Newspaper or job printing |
| Section III-A | 4.11 Bank or other financial institution |
| Section III-A | 4.14 Freight terminal or storage warehouse |
| Section III-A | 5.3 Salesrooms (subject to limitations of 5.3) |
| Section III-A | 6.1 Wholesale warehouse, including office or showroom facilities |
| Section III-A | 6.2 Light industrial uses (subject to the limitations of 6.2) |

OFFICE PARK DISTRICT

- a. As-of-Right
 - Section III-A 3.1 Church or other place of worship, etc.
 - Section III-A 3.2 Schools or playgrounds
 - Section III-A 3.3 Schools - Private, including dormitories accessory thereto
 - Section III-A 3.4 Nursery school or other use for day care of children, or a privately organized camp, etc.
 - Section III-A 3.5 Public buildings and premises for government use, etc.
 - Section III-A 3.10 Public-utility buildings and structures
 - Section III-A 4.10 Business or professional offices or agencies
 - Section III-A 4.11 Bank or other financial institution
- b. By Special Permit A2
 - Section III-A 3.8 Congregate living facility
 - Section III-A 4.9A Sit-down restaurant
 - Section III-A 4.9C Fast-food restaurant
 - Section III-A 4.9D Take-out restaurant
 - Section III-A 4.11A Bank, automated teller (subject to the limitations of 4.11A)
 - Section III-A 4.16 Hotel or motel
 - Section III-A 4.18 Parking area for employees (subject to the limitations of 4.18)
- c. Accessory Use

Uses such as cafeterias, day care facilities, health and fitness facilities, education and training facilities, and similar facilities designed for the use of on-site employees shall be allowed as part of any use permitted as-of-right or by Special Permit. Further, up to fifteen percent (15%) of the gross first floor area of any structure may, as-of-right, be used for office, engineering or architectural supply stores, newsstands, bookstores, photocopy stores, and other retail services deemed by the ~~Board of Appeals~~ Special Permit Granting Authority to be directly related to and supporting business activities within the Office Park District.
- d. Dimensional Sign, and Parking Criteria

For properties zoned Office Park that are included within the Overlay District, the following modifications to Section IV-A, Schedule of Dimensional Requirements, pertaining to floor area ratio and maximum height shall apply; further, properties within the Overlay District shall be subject to Section V-A, Off-Street Parking, and Section V-B, Signs, as noted below.

Section IV-A

Floor Area Ratio: 0.15 permitted as-of-right, 0.25 maximum by Special Permit A2
 Maximum Height: forty-eight feet (48), but not more than four stories

Section V-A

Criteria of Section V-A, Off-Street Parking, shall apply to all development within the Overlay District.

d. Schedule of Assessment Payments

Payments into the Fund shall be made in accordance with a schedule approved by the ~~Board of Appeals~~Special Permit Granting Authority. The amount of the initial payment shall be determined by the ~~Board of Appeals~~Special Permit Granting Authority at the time of the granting of the Special Permit, but shall not exceed one-third of the total payment. Further, at the time of the granting of the Special Permit the applicant shall provide an irrevocable letter of credit or a financial instrument approved by the ~~Board~~Special Permit Granting Authority for the balance. If the applicant fails to make any subsequent payments in accordance with the Special Permit conditions, the ~~Board of Appeals~~Special Permit Granting Authority may draw down the balance of the letter of credit or the approved alternate financial instrument. The balance of the funds, if any, shall be paid immediately at the time of the issuance of a temporary or permanent occupancy permit; in no instance shall any temporary or permanent occupancy permit be granted unless the balance of the assessment due has been paid in full. The applicant may, at any time, make a lump sum payment of the entire required assessment.

e. Refund of Assessment

If for whatever reason a Special Permit lapses and no construction has occurred on the site, the applicant, upon written request to the ~~Board of Appeals~~Special Permit Granting Authority, shall be granted a public hearing. If the ~~Board of Appeals~~Special Permit Granting Authority finds that the Permit has lapsed and no construction has occurred, the applicant shall be entitled to a refund of all assessment payments.

8. Screening

For all properties subject to the regulations of the South Hingham Development Overlay District a screening plan shall be required as part of the site plan review process, Section I-I. At a minimum if the development's at-grade parking areas are visible at normal eye level from a public way or from any point abutting a residential district that is less than five hundred (500) feet away, they shall be screened by an ornamental lattice, planted berm, opaque fence, or sight-obscuring planting or screenings which are comprised of at least seventy-five percent (75%) evergreen shrubs or trees. Plantings shall be maintained in healthy growing condition, and fencing shall be maintained in good repair by the land owner.

III-F Personal Wireless Services Overlay District

1. Purpose

The purpose of this Section is to establish a district in which adequate Personal Wireless Services (as defined in Section V-E) may be provided with minimal harm to the public health, safety and general welfare. Specifically, the District is created to protect the character and appearance of the Town, to assure public safety, to reduce adverse visual effects and to maintain the Town's scenic, historic and environmental resources.

2. Location

The Personal Wireless Services Overlay District shall include the following parcels: the Hingham Landfill (Assessors Map 106-3, 4, and 7), the Hingham Town Hall (Assessors Map 80-95), Mass-American Water Company, 900 Main Street (Assessors Maps 147-8 and 158-36), South Shore Country Club (Assessors Map 70-14), and Town Forest (Assessors Maps 148-11 and 170-9).

3. Submittal Requirements

A Special Permit A2 is required to erect Personal Wireless Services Facilities (as defined in section V-E), and service providers must comply with all requirements of Section I-I and section V-E of this By-Law.

III-G Downtown Hingham Overlay District

Warrant Article
Item 7(c) and (d)

1. Purpose

To protect and promote the viability and value of business and residential properties located in the Downtown Hingham Overlay District ("Downtown") in a manner consistent with Hingham's historic character.

2. Objectives

- a. Encourage planning and development which will maintain and improve the economic viability of Downtown businesses.
- b. Encourage planning and development of the Downtown as a visitor destination for historic sightseeing, shopping and dining.
- c. Encourage creation of mixed use buildings incorporating business and residential uses to create more diverse housing options in Hingham.
- d. Encourage planning for and more efficient use of, off-street parking to better facilitate resident and visitor access to and parking in the Downtown.
- e. Encourage maintenance, restoration or replacement of existing structures to bring them into compliance with current building, plumbing and electric codes, as well as the latest fire and handicap access regulations, in a manner consistent with Hingham's historic character.

3. Applicability

Parcels within the Downtown Hingham Overlay District shall be subject to the requirements of this section. In addition, for any parcel located partially in the Downtown Hingham Overlay District, such portion located in the Overlay District shall be subject to the requirements of this Section, provided, however, that if any structure or use on such parcel lies partially in the Overlay District and partially in another zoning district, such structure or use shall comply with the requirements of this Section.

4. Permitted and Prohibited Uses

The permitted uses and uses allowed by the Special Permit in Business District A, as set forth in Section III-A, Schedule of Uses, shall be permitted or allowed, as applicable, in the Overlay District, except that the following uses are prohibited in the Overlay District:

- | | |
|---------------|---|
| Section III-A | 4.3 Funeral Home |
| Section III-A | 4.4 Animal or veterinary hospital |
| Section III-A | 4.5 Commercial breeding |
| Section III-A | 5.1 Automotive filling or service station |
| Section III-A | 5.2 Auto repair |
| Section III-A | 5.3 Car dealership & service facilities |
| Section III-A | 5.4 Marina; boat livery; sales, storage & repair of boats |
| Section III-A | 6.1 Wholesale warehouse |

5. Design Review Criteria

- a. Applicability. Any project located within the Overlay District, but not within a Local Historic District, and 1) subject to Special Permit or site plan review or 2) which

requires a building permit and affects the exterior architectural features of a building or structure, shall also be subject to Design Review. The following alterations, unless subject to the requirements of Section IV-B, 6 shall be exempt from the requirements of this subsection:

- (i) normal maintenance and repair of the building or structure; and/or
 - (ii) replacement of exterior materials, including roofing materials, shingles or clapboard, provided such materials are replaced with the same type of materials.
- b. Submittal Requirements. The building or special permit application shall include a narrative description of the proposed work affecting the exterior of the building or structure, including a description of the materials to be used. The ~~Planning Board and/or the Board of Appeals~~Special Permit Granting Authority may also require additional submittals, including plans prepared by qualified registered professionals showing the total square footage and dimensions of all buildings, the building elevations and perspective renderings, and detailing the exterior architectural features of the buildings and the exterior materials to be used.
- c. In connection with its review of such work, the ~~Planning Board and/or the Board of Appeals~~Special Permit Granting Authority may request comments on the proposal from the Hingham Historical Commission and/or the Hingham Historic Districts Commission, and may engage other professional consultants, experts or assistance consistent with the provisions of Section I-I,2 of this By-Law.
- d. Criteria. The ~~Planning Board and/or the Board of Appeals~~Special Permit Granting Authority shall consider the architectural and aesthetic consistency of the proposed project with the historic character of the Overlay District, taking into account appropriate scale, massing, location of buildings on lot, roof slopes, street façade, fenestration, exterior building materials, and similar factors.

6. Commercial/Residential Building Special Permit

- a. Application and Review Requirements
An application for a Commercial/Residential Special Permit A2 shall comply with all of the requirements of this Section and with Sections I-F, I-G and I-I of this By-Law. In addition, the ~~Board of Appeals~~Planning Board may grant a Special Permit A2 under this Section only if it finds that the applicant has demonstrated that the Commercial/Residential Building will not have an adverse impact on abutting residential or commercial neighborhoods and can be constructed with due consideration for health and safety.
- b. Eligibility Requirements
Buildings which meet the following criteria are eligible to apply for a Commercial/Residential Building Special Permit:
 - (i) Buildings containing a permitted commercial use at the street level story. A permitted commercial use shall be those uses permitted under Section III-G, 4 above, but excluding Parking Areas under Section III-A, 4.18, except as specifically provided in subsection 9(d)(v) below; and

- (ii) Sufficient off-street parking to meet the requirements of subsection 6(d) of this Section III-G.

c. Additional Requirements

- (i) A commercial use shall be located at ground level facing the street(s) on which the parcel has frontage. Dwelling units shall be located above ground level. No dwelling units shall be permitted below the ground level.
- (ii) Dwelling units shall not be smaller than 575 square feet for a studio or one bedroom dwelling unit and 750 square feet for a two bedroom dwelling unit. A dwelling unit may not contain more than two bedrooms.
- (iii) Adequate provision shall be made for the disposal of household trash.

d. Parking Requirements for Dwelling Units in Commercial/Residential Buildings
Except as otherwise provided in this subsection 6(d), the criteria of Section V-A, Off-Street Parking Requirements, shall apply to the Overlay District.

- (i) The purpose of this subsection (d) is to ensure that sufficient off-street parking is provided for all dwelling units created under this Section.

Provision for off-street parking shall be as follows:

Studio or one bedroom dwelling unit	1 space
Two bedroom dwelling unit	2 spaces

- (ii) When off-street parking exists or may be constructed on the parcel where the use is proposed, the ~~Board of Appeals~~Planning Board may make a finding that the commercial use(s) and the residential use within the Commercial/Residential Building are complementary uses having different peak demand times, in which event on-site parking may satisfy both the residential and the commercial uses (subject to the requirements of Section V-A in the event of a change or increase in commercial uses).
- (iii) Parking for all dwelling units (including, without limitation, dwelling units proposed in newly constructed or reconstructed buildings or in newly constructed stories to existing buildings) shall be located on the same parcel or on a contiguous parcel under common ownership.

Notwithstanding the foregoing, for dwelling units proposed in existing stories of existing buildings which, as of December 1, 2003, (a) are at least two stories in height and (b) lack required on-site, off-street parking to meet the requirements of this Section, the ~~Board of Appeals~~Planning Board may grant a waiver to permit Leased Parking for Commercial/Residential Buildings, provided that a copy of a written, fully executed and effective lease, with a term of at least one (1) year, permitting use of sufficient parking spaces to comply with this Section for a minimum of overnight parking shall be provided to the ~~Board of Appeals~~Planning Board prior to the issuance of the Special Permit. For purposes of this Section III-G, "Leased Parking for Commercial/Residential Buildings" shall be the

provision of parking for dwelling units in a Commercial/Residential Building on land of a third party located within 500' of the benefited parcel (but excluding parcels with single-family or two-family dwellings outside of the Overlay District).

The granting of this parking waiver shall require a finding by the ~~Board of Appeals~~Planning Board that such lease of parking spaces does not create a violation of the zoning of, parking requirements for existing uses on, or any special permit or variance granted to, the burdened parcel. In addition, the applicant (or its successor) shall be required, as a condition of the issuance of a Special Permit, (i) to certify to the Building Commissioner annually, on the anniversary of the date of the issuance of a Special Permit, that such lease remains in full force and in effect and (ii) no later than thirty (30) days prior to the expiration or other termination of such lease, to apply to the ~~Board of Appeals~~Planning Board for a modification of its Special Permit which application shall provide for the required parking in another manner consistent with the requirements of this subsection 6(d).

- (iv) No newly constructed parking shall front on a public way, except along Summer Street (Route 3A), Station Street or the Station Street parking areas.
- (v) For parcels which have opposite property lines along two streets or ways and for parcels with frontage on Summer Street (Route 3A), fully enclosed garage parking may be provided within the building at ground level if such parking is accessed from the rear of the building, is not visible from the front of the building, and such building has a permitted commercial use at the front of the building. For purposes of this Section III-G, any portion of a building facing Main Street, South Street, North Street, or Summer Street shall be considered the front of a building.
- (iv) Notwithstanding any provision of Section V-A to the contrary, and except as specifically provided in this Section III-G, 6(d), off-street parking requirements for residential uses in a Commercial/Residential Building shall not be reduced nor waived by special permit or otherwise. In the event of a conflict between the provisions of Section V and this Section, the provisions of this Section shall control.

III-H Nonconforming Uses

1. Continuation - The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of the By-Law may be continued although such structure or use did not conform with the provisions of the By-Law as adopted or amended.
2. Extension - No increase in the extent of the nonconforming use of a structure or land may be made.
3. Restoration - A lawfully existing nonconforming building or structure which has been damaged or destroyed by fire or other casualty may be repaired or rebuilt; provided, however, that the repaired or rebuilt structure shall be no less conforming than the structure that was so damaged or destroyed.

4. Termination - The rights of continuation or restoration of a nonconforming building or structure or use of a building, structure or land, provided in the foregoing subsections 1, 2 and 3 of this Section III-H shall terminate in the event of non-use or non-restoration for a period of not less than two (2) years, provided, however, that the nonconforming use of more than one dwelling unit within an existing dwelling (as set forth on the list on file at the Hingham Building Department dated April 25, 2005 and amended by the Building Commissioner from time to time as needed) shall not be terminated unless such dwelling has been converted to a single-family detached dwelling with complete living facilities for only one household.
5. Changes - Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.
6. For the purposes of this Section III-H, the alteration of, addition to, reconstruction of, extension of, or structural change in an existing nonconforming single or two-family residential building or structure shall not be considered the extension of a nonconforming use, provided that:
 - a. the single or two-family residential building or structure conformed in all respects to the Zoning By-Law in existence at the time of its initial construction; and,
 - b. the alteration of, addition to, reconstruction of, extension of, or structural change in the nonconforming single or two-family residential building or structure does not further reduce the minimum linear measurement of the existing nonconforming dimensions.

III-I Accessory Uses

Warrant Article
Item 7(e)

1. Accessory uses shall be those uses that are customarily incidental to and located on the same lot with a principal use or on an adjoining lot under the same ownership and which are uses otherwise permitted in the zoning district in which they are proposed, provided, however, that:
 - (a) Uses considered customarily incidental to residential uses shall be those accessory uses permitted under Section III-A, 1.8. Such uses shall also be permitted in buildings accessory to single family and two-family dwellings located in non-residential districts.
 - (b) Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a Special Permit A2, provided the ~~Board of Appeals~~Planning Board finds that the proposed accessory use does not substantially derogate from the public good.
2. Additional Requirements
 - (a) Accessory uses may be located in any area contained within a non-conforming residential building (whether primary or accessory) existing as of April 26, 2004.
 - (b) Notwithstanding the provisions of Section III-A, 1.8.4, 1.8.5 and 1.8.6, regarding resident offices, studios, or customary home occupations, as described in those sub-sections, no more than three persons, including the resident professional(s), or business owner(s), shall be employed on the premises at any one time.
 - (c) Such uses shall be clearly incidental and secondary to the primary use.

SECTION IV**Intensity Regulations****IV-A Schedule of Dimensional Requirements**

No lot shall be created or subdivided and no building or structure shall be built, enlarged or located in such manner as does not conform to the requirements set forth in Sections IV-A, IV-B and IV-C of this By-Law.

<u>minimum lot size</u>	<u>maximum height</u>	<u>maximum percentage which may be covered by all buildings</u>	<u>minimum yard dimensions</u>	<u>special requirements applicable to each district</u>
<u>area</u>	<u>frontage</u>	<u>feet</u>	<u>stories</u>	<u>front</u> <u>side</u> <u>rear</u>
RESIDENCE DISTRICT A				
20,000 sq. ft.	125'	35'	2½	25' 15' 15' 6, 9, 10, 13, 16
RESIDENCE DISTRICT B				
30,000 sq. ft.	150'	35'	2½	35' 20' 20' 6, 9, 13, 16
RESIDENCE DISTRICT C				
40,000 sq. ft.	150'	35'	2½	50' 20' 20' 6, 9, 13, 16
FLEXIBLE RESIDENTIAL DEVELOPMENT IN RESIDENCE DISTRICTS A THROUGH C				
All dimensional requirements for projects in Residence Districts A through C authorized by a Flexible Residential Development Special Permit under Section IV-D are set forth in Section IV-D.				
TOWN HOUSE IN RESIDENCE DISTRICT D				
5,000* sq. ft.	30' per dwelling unit	35'	2½	50' 20' 20' 6, 9, 10, 11, 12, 16
RESIDENCE DISTRICT E				
30,000 sq. ft.	150'	35'	2½	35' 20' 20' 6, 9, 10, 16

*Per dwelling unit of one bedroom. For each additional bedroom, an additional 1,000 square feet of lot area is required.

IV-B Special Requirements to Schedule of Dimensional Requirements

1. No building, structure, parking area or septic system shall be constructed within 100' of a residence district, except where the zoning district boundary is in a street, in which case the setback from said boundary shall be 50'. A natural or landscaped vegetative barrier as approved under site plan review shall be retained or created and maintained within this setback.
2. A minimum of 15% of the area of each lot shall not be built upon, paved or parked upon, and shall be maintained either in its natural state or landscaped. Along the entire street frontage of each lot a green or landscaped strip not less than 15' wide shall be maintained in its natural state or landscaped with grass, trees and shrubs, not paved except for driveways, not parked upon and not built upon except for signs. The required 15% may include the 15' green strip.
3. Any yard space or area required to be kept open and unbuilt upon may, nevertheless, if otherwise lawful, be used for off-street automobile parking, or for outdoor storage of packaged articles, packaged supplies or packaged materials, provided any such outdoor storage space shall be effectively screened from view by some substantial means such as an ornamental wall an ornamental lattice or a dense planting. A green strip not less than thirty (30) feet wide on which to grow grass, bushes, flowers or trees, shall be maintained open and green, unbuilt upon, unused and unpaved and not parked upon, all along each side or rear property line of such a lot wherever it abuts land residentially zoned.
4. Frontage specified shall be the minimum width to a depth of 200'.
5. A green yard space not less than twenty (20) feet wide shall be maintained open and green with grass, bushes, flowers or trees or any combination of them, along the entire length of each side lot line or rear lot line of such a lot and (except for entrance and exit driveways) along the entire street frontage of such lot, and such yard space shall not be built on nor paved nor used for automobile parking. Not less than 80% of the land area of such a lot shall remain open and unbuilt on, but such open space may be used for automobile off-street parking, driveways, sidewalks and store service yards, except that such use shall not be permitted in any part of the 20' wide green perimeter strip above specified. Notwithstanding the foregoing, a green yard space not less than fifty (50) feet wide shall be maintained open and green with grass, bushes, flowers, trees, or in an undisturbed natural condition, or any combination of the foregoing, along the entire length of each side lot line and rear lot line of such lot where such side lot line or rear lot line abuts a Residence A or Residence B or Residence C District.
6. Site Plan Review, as defined in Section I-I, shall be conducted by the Planning Board or its designee, for all projects which meet the following criteria:
 - a. all non-residential projects which are estimated to cost \$20,000 or more;
 - b. all projects which 1) create a land disturbance or an alteration of drainage patterns over an area greater than 20,000 square feet; or 2) create a land disturbance of more than 2500 square feet in areas with slopes greater than 10%; provided, however, that the following types of projects shall be exempt from site plan review under this subsection b:
 - i. normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;

- ii. routine maintenance of existing landscaping, gardens or lawn areas;
 - iii. the construction of fencing that will not alter existing terrain or drainage patterns;
 - iv. installation of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain, ground cover, or drainage patterns; or
 - v. projects wholly within the jurisdiction of the Conservation Commission and requiring an Order of Conditions under the Wetlands Protection Act, MGL c. 131, s. 40, the Town of Hingham Wetlands Protection By-Law, and/or the Rivers Protection Act.
7. Each free standing structure, regardless of use, shall be not less than 1500 sq. feet lot coverage gross horizontal dimension. Each structure may be divided into street floor retail occupancy units not smaller than 750 sq. feet each, or into business, professional or personal service occupancy units not smaller than 350 sq. feet each.
8. No more than two driveways of 26' width each shall be permitted on the total street frontage of each retail store group.
9. In all residence districts and Business District A, the front setback may be as near the street as the average of the buildings or structures in the adjoining lots. For a vacant lot, the front setback line shall be the minimum front setback required in the district.
10. In the case of land used for housing the elderly persons of low income, or persons of low and moderate income, pursuant to the provisions of subsection 1.5 of Section III-A, the following provisions shall apply:
- a. There shall be no less than three thousand (3,000) square feet of lot area per dwelling unit.
 - b. No more than forty percent (40%) of the lot area shall be occupied by the buildings.
 - c. A green yard space, no less than twenty (20) feet wide, shall be maintained open and green with grass, bushes, flowers, or trees, or any combination thereof, along the entire length of each side lot line and rear lot line and (except for driveways) along the entire street frontage, and such green yard space shall not be built upon nor paved nor used for storage or for vehicle parking, but signs and fences not otherwise prohibited by law may be erected and maintained thereon.
 - d. There shall be a minimum distance of thirty (30) feet between all buildings on such land.
 - e. There shall be reserved sufficient areas to provide parking spaces for vehicles at the rate of one such space per dwelling unit. So much of said area or areas shall be paved as may be deemed necessary by the ~~Board of Appeals~~ Permit Granting Authority. In making such determination, the ~~Board of Appeals~~ Permit Granting Authority shall give due consideration to the location of the land, the probable number of vehicles parking thereon, the probable age, economic resources, and parking requirements of the occupants of such dwelling units, and such other factors as said ~~Board~~ the Permit Granting Authority may deem pertinent in each case. From time to time the ~~Board of Appeals~~ Permit Granting Authority may, upon the petition of the Board of Selectmen, the Building Commissioner or the Planning Board, and after notice and hearing as provided by subsection 3 of Section I-D, determine the necessity for additional paving of such reserved area or areas and may order additional paving in accordance with such determination.

Warrant Article
Item 8(a)

A = land area in feet
S = shape factor not exceeding 22

A lot may have a shape factor exceeding twenty-two (22) if a contiguous portion of the lot:

- a. meets the minimum area requirement for the zoning district; and
- b. has a shape factor not exceeding twenty-two (22); and
- c. is accessible within the property boundaries for purposes of ingress, egress and location of utilities; and
- d. is located at a depth not more than two (2) lots removed from the street on which the lot's frontage is located.

IV-D Flexible Residential Development (FRD) - Special Permit

Warrant Article
Item 8(b)

1. Purposes
 - a. To encourage the permanent preservation of open space, water bodies and supplies, wetlands and other natural resources, and historical and archeological resources;
 - b. To preserve and enhance community character by allowing for greater flexibility, creativity and open space within residential developments;
 - c. To provide for a diversified housing stock, including Moderately-Sized Homes and Low or Moderate Income Housing;
 - d. To facilitate the construction and maintenance of housing, streets, utilities and public service facilities in an economical and efficient manner; and
 - e. To minimize the total amount of disturbance on the site.
2. Definitions
Capitalized terms used herein and not otherwise defined herein shall have the same meanings ascribed to such terms in Section VI of this By-Law.

Additional Dwelling Units

As defined in Section IV-D, 7.

Conventional Yield

The number of Single-Family Detached Houses that would be permitted under Massachusetts General Laws Chapter 41, Sections 81K - 81GG (The Subdivision Control Law) and which could reasonably be expected to be developed in full conformance with applicable zoning, subdivision rules and regulations, wetland by-laws, Board of Health rules and regulations and all applicable rules and regulations of the Town of Hingham.

Existing Protected Open Space

Open space not located within the site which is protected in perpetuity by legal restriction or form of ownership (e.g., land which is under the control of the Conservation Commission, owned by a non-profit organization the principal purpose of which is the conservation of open space, or subject to a conservation restriction).

Flexible Residential Development (or "FRD")

An alternative development plan to a conventional subdivision which permits flexibility in the layout and design of a subdivision and Additional Dwelling Units in exchange for the preservation of a significant portion of the site as open space and the construction of diversified housing.

Low or Moderate Income Housing

Dwelling Units restricted for a period of not less than thirty (30) years to occupancy by persons or families who qualify as low or moderate income, as those terms are defined for this area by the Massachusetts Department of Housing and Community Development (DHCD) and which are affordable to such persons in accordance with applicable regulations of DHCD or the Department of Housing and Urban Development. For the purpose of this Section IV-D, any Dwelling Unit intended to be considered as Low or Moderate Income Housing shall have the following minimum specifications:

	<u>Single Family Detached House</u>	<u>Town House</u>
Gross Floor Area	1,800 sq. feet	1,200 sq. feet
Bedrooms	Two	Determined in accordance with Section IV-D, 7(h)
Garage Spaces	One	One

Moderately-Sized Home

For the purpose of this Section IV-D, any Dwelling Unit intended to be considered as a Moderately-Sized Home shall have the following maximum specifications:

	<u>Single Family Detached House</u>	<u>Town House</u>
Gross Floor Area	2,200 sq. feet	1,500 sq. feet
Bedrooms	Three	Three
Garage Spaces	Two	Two

Open Space

Land within the site that is prohibited from development (except as specifically provided herein), and managed under the requirements set forth in Section IV-D, 8 hereof.

Unrestricted Dwelling Units

As defined in Section IV-D, 7.

3. Eligibility

Sites that meet the following criteria are eligible for a Special Permit A23:

- Sites containing a minimum of five (5) acres and a Conventional Yield of not less than three (3), subject to subsection 3(d) below.
- Sites located in Residential Districts A, B and C.
- Sites with the proposed use permitted in the District in which the site is located, except that if the proposed FRD includes Low or Moderate Income Housing, Town Houses shall also be permitted instead of, or in combination with, Single Family Detached Houses.
- Sites consisting of a single parcel or two or more contiguous parcels. For the purposes of this Section IV-D, parcels physically separated by a street or way (other than a Major Street as defined in Section 4 of the Planning Board Rules and Regulations) may be considered contiguous parcels, provided that (i) the parcels on each side of such street or way are each at least three (3) acres and (ii) the frontage of the parcels on such street or way shall be parallel for a distance of not less than fifty (50) feet.
- The site may be a subdivision or a division of land pursuant to Massachusetts General Laws Chapter 41, Section 81P, provided, however, that a FRD may also be permitted on a site intended as a condominium and not so divided or subdivided.

4. Application and Review Procedure

The review procedure for a Flexible Residential Development (FRD) consists of two steps: 1) Preliminary Flexible Residential Development Plan ("Preliminary FRD Plan") review; and 2) Definitive Flexible Residential Development Plan ("Definitive Plan") review. In the first step, the applicant shall file a Preliminary FRD Plan, as described below, which describes the overall development proposal for the site. The Planning Board shall grant or deny a Special Permit A32 based on the information contained in the Preliminary FRD Plan application.

If the Special Permit A32 is granted, the applicant shall submit a Definitive Plan, as described below, based on the Preliminary FRD Plan. The Planning Board shall then review the Definitive Plan as a definitive subdivision plan. Two separate public hearings shall be held, one for the Special Permit and one for the Definitive Plan.

The applicant is encouraged to request a pre-application review at a regular business meeting of the Planning Board. If one is requested, the Planning Board shall invite all relevant boards and committees to attend, including but not limited to the Conservation Commission, Board of Health and, if applicable, Sewer Commission, Historic Districts Commission and Housing Partnership Committee. The purpose of the pre-application hearing is to minimize the applicant's cost of engineering and other technical experts, and to obtain the input and direction of the Planning Board prior to filing the application. At the pre-application review the applicant shall outline the proposed FRD and seek preliminary feedback from the Planning Board and/or its technical experts. The applicant is also encouraged to request a site visit by the Planning Board and/or its agents in order to facilitate pre-application review. If such a site visit is requested, all applicable boards and committees will also be notified and invited to attend.

5. Preliminary Flexible Residential Development Plan Review
 - a. An application for Preliminary FRD Plan review shall include the following:
 - (i) Site Context Map. A map illustrating the larger context in which the site is located, including associated or adjacent neighborhoods, natural features, roads and zoning districts.
 - (ii) Existing Conditions/Site Analysis Map. Based on existing data sources and field inspection, this map should contain all zoning classifications applicable to the site, all physical and natural features including water bodies, streams, wetlands, areas of greater than 40% slope, vistas, geological and topographical features, topography at 2' intervals, unique vegetation, historic features, large boulders or ledge outcroppings, wooded and open areas, trees with a caliper of 6 inches or greater and stone walls.
 - (iii) Preliminary Plan. The preliminary development plan, prepared by a professional landscape architect registered in the Commonwealth of Massachusetts, which complies with the requirements of Section 3, B (1) and (2) of the Planning Board Rules and Regulations. The Planning Board may waive specific requirements relative to the content of the Preliminary Plan as the Planning Board deems appropriate. The Preliminary Plan shall also identify the proposed location and size of structures to be built on the site.
 - (iv) Conventional Yield Sketch Plan. A sketch plan showing the Conventional Yield.
 - b. The applicant shall file the Preliminary FRD Plan with the Town Clerk and Planning Board, and submit copies of the Preliminary FRD Plan to the Board of Health, Conservation Commission, Fire Department, and Department of Public Works. The applicant shall also submit copies of the Preliminary FRD Plan to such other Town boards and agencies as the Planning Board shall request. The applicant shall file with the Town Clerk and submit to the Planning Board one or more transmittal letter(s), as required, certifying that it has forwarded such

- copies to the Town boards and agencies as provided in this subparagraph and as may be requested by the Planning Board.
- c. The Town boards and agencies receiving copies of the Preliminary FRD Plan shall submit written recommendations to the Planning Board within 35 days after filing of the Preliminary FRD Plan. Failure to report to the Planning Board within 35 days shall be deemed a lack of objection to the application. The applicant is encouraged to meet with the Town boards and agencies receiving copies of the Preliminary FRD Plan during the review period.
 - d. The Planning Board, within 60 days or such further time as may be agreed upon in writing by the applicant, may grant a Special Permit ~~A3A2~~ if it determines that the proposed FRD achieves greater flexibility and creativity in the design of residential development than a conventional subdivision plan, promotes the preservation of Open Space and natural resources, reduces the total amount of disturbance on the site, facilitates the efficient delivery of services and complies with the requirements of this Section IV-D.
 - e. All Open Space shall be dedicated at the time the Special Permit holder commences construction under a Building Permit.
6. Definitive Flexible Residential Development Review
- a. If the Special Permit ~~A3A2~~ is granted by the Planning Board, the applicant shall file with the Planning Board an application for a Definitive Plan in accordance with the Rules and Regulations of the Planning Board relative to the submission of a Definitive Plan (Section 3, C). In addition, the applicant shall submit a list of all waivers requested from the Planning Board Rules and Regulations.
 - b. The Planning Board shall review the Definitive Plan to determine its compliance with the Subdivision Control Law, and hold a public hearing as required by Massachusetts General Laws Chapter 41, Section 81T. The Special Permit ~~A3A2~~ shall be reconsidered if there is a substantial variation between the Definitive Plan and the Preliminary FRD Plan. A substantial variation shall be defined as an increase in the number of Lots or Dwelling Units, a decrease in the amount of Open Space and/or a change in the development pattern which adversely affects natural landscape features and Open Space, or surrounding residential properties. If the Planning Board finds that a substantial variation exists, it may reopen the Special Permit ~~A3A2~~ public hearing to review the modifications to the Preliminary FRD Plan and, based on its findings, may approve, modify or revoke the Special Permit ~~A3A2~~.
7. Density
- The total number of Dwelling Units permitted on the site shall not exceed the Conventional Yield, provided that, if the Planning Board makes a finding that the proposed development complies with all of the provisions of this Section IV-D, the total number of Dwelling Units permitted on this site shall be the greater of (i) one hundred thirty five percent (135%) of the Conventional Yield (rounded to the nearest whole number) or (ii) the Conventional Yield plus two (2). The number of Dwelling Units permitted in excess of the Conventional Yield are referred to herein as the "Additional Dwelling Units".
- a. Subject to (d) through (f) below, at least one third (1/3) of the Additional Dwelling Units shall be Low or Moderate Income Housing;
 - b. Subject to (d) through (f) below, at least one-third (1/3) of the Additional Dwelling Units shall be Moderately-Sized Homes;
 - c. The remaining Additional Dwelling Units shall be referred to herein as "Unrestricted Dwelling Units";
 - d. If the total number of Additional Dwelling Units is less than three (3), the first Additional Dwelling Unit shall be designated as Low or Moderate Income Housing

requirement. No buffer shall be required along roadways created as part of the FRD. No portion of the Open Space buffer shall be within the boundaries of any Lot. Upon a finding by the Planning Board that a buffer of lesser width would be sufficient to screen and/or separate the FRD from the abutting properties or adjacent roadways, the buffer may be reduced. Upon a finding of the Planning Board that the natural state of the buffer is insufficient to adequately separate and/or screen the site from abutting properties, additional trees, shrubs and/or plantings shall be required.

- c. To the extent a specific provision of this Section IV-D is in conflict with any other provisions of this By-Law, the provisions of this Section IV-D shall control.

10. Additional Requirements

- a. Roadways and Lots shall be designed and located in such a manner as to maintain and preserve existing tree cover, natural topography and significant natural and cultural resources, to minimize cut and fill, and to preserve and enhance views to and from the site and the Dwelling Units.
- b. The removal or disruption of historic, traditional, or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.
- c. When site conditions permit, the use of "soft" (non-structural) storm water management techniques (such as swales) and other drainage techniques that reduce impervious surface and enable infiltration where appropriate shall be required.
- d. Walkways and bicycle paths shall be provided to link Dwelling Units with the Open Space and with any parking areas, recreation facilities and Existing Protected Open Space and paths and/or sidewalks on adjacent land where appropriate.
- e. No lot shown on a plan for which a Special Permit is granted under this Section IV-D may be further subdivided and a notation to this effect shall be shown on the plan.
- f. No building permit shall be issued for the construction or modification of any Moderately-Sized Home that would result in a violation of any of the maximum specifications set forth in the definition of Moderately-Sized Home.

Warrant Article
Item 8(c)

IV-E Residential Multi-Unit Development

- 1. Town houses, garden apartments and apartment houses shall be subject to the following standards and conditions.
 - a. There shall be a minimum of 5 acres of land within any parcel to be developed for town houses, garden apartments or apartment houses.
 - b. The average number of dwelling units per acre in any development shall not exceed eight (8).
 - c. The shortest distance between any two structures shall not be less than 35 feet. Courts shall be completely open on one side. The ~~Board of Appeals~~Planning Board may waive the separation requirements if the design of the proposed development is benefited by closer spacing.
 - d. There shall be set aside, not to be built upon, unpaved, landscaped and/or left natural, with an acceptable balance of trees, shrubs and grass, site area equal to 2000 square feet per dwelling unit. The buffer area described in subparagraph (f) below shall not be considered as living space in computing the 2000 sq. ft. of living space per dwelling unit.
 - e. In addition to the 2000 square feet of living space required in (d) above, 1000 square feet of open space per dwelling unit shall be provided, which may include open paved areas, and one-half the area of covered parking or garage areas.

- f. There shall be provided a landscaped side or rear yard buffer area of at least 50 feet in width adjacent to each property line of the parcel to be developed. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees and shrubs and shall be maintained in proper order so as to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten feet.
 - g. There shall be set aside, suitably prepared, protected and equipped for organized recreational activities, site areas equal to 300 square feet per dwelling unit, which are not to be included in the buffer area.
 - h. Each dwelling unit shall consist of at least one room, exclusive of hall, kitchen and bathroom, and there shall be at least 525 square feet of enclosed floor space for a one-room unit. For each additional room an additional 125 square feet shall be required.
 - i. Two parking spaces shall be provided for each dwelling unit. Such spaces shall be within 200 feet of the intended users. No parking shall be permitted within the buffer area.
 - j. All dwelling units shall be connected to public sanitary sewer. The ~~Board of Appeals~~Planning Board may waive this requirement with respect to land in the former Hingham Naval Ammunition Depot to the extent that such land is not within the North Sewer District and the applicant makes a satisfactory showing that its proposed sewage disposal system will not have adverse ecological impact.
 - k. All utilities shall be underground.
 - l. No space below ground level shall be approved for dwelling purposes.
 - m. The placement, size, arrangement and use of access routes to public or private streets shall be adequate to serve residents and provide no hindrance to the safety of existing or proposed streets. Pedestrian walkways with all weather surfacing may be required where the density of population or school bus routes make such advisable for convenience and safety. Street and parking lot grading, drainage and surfacing shall comply with the specifications of the Subdivision Rules and Regulations.
2. Each application for a Special Permit A2 for the town house, garden apartment and/or apartment house development shall be subject to the provisions of Section I-I, Site Plan Review, and to the extent not already included therein, to the following additional provisions:
- a. the site plan required in Section I-I shall be prepared by a registered engineer, landscape architect, or architect and shall be accompanied by four (4) prints of a complete development plan at a minimum scale 1" = 40' and by the plans and information required in subparagraphs (b) through (h) below;
 - b. a sketch plan showing generally existing topography, existing vegetation and existing major structures within the site and within 500 feet of the boundaries of the site;
 - c. a grading plan and, in a schematic manner, proposed utilities and drainage systems including water for fire protection and public sanitary and storm sewers;
 - d. a plan containing schematic renderings and table to show the extent and location of the proposed structures and, generally, the appearance of representative structures within the development, the number and type of units and the number and size of rooms per unit with proposed tolerances and the specific exterior material proposed to be used;
 - e. a sketch plan of all areas showing generally the location, types and sizes of trees and shrubs; the exterior lighting pattern to include description and location of lighting fixtures, and description, size and location of signs within the development;

- f. a sketch plan illustrating the relationships on the site of the motor vehicle and pedestrian traffic patterns;
 - g. copies of any covenants and/or restrictions to be recorded before the Building Permit is issued to assure the development and maintenance of the property in substantial accordance with the complete development plan; and
 - h. such other information as the ~~Board of Appeals~~Planning Board may reasonably request to carry out the high standards of development contemplated by this Section.
- 3. Town houses, garden apartments and apartment houses shall be exempt from provisions of Section IV-C, 4.
- 4. The issuance of a Special Permit A2 for a town house, garden apartment or apartment house development shall be subject to the following provisions and procedures.
 - a. ~~The Board of Appeals~~Planning Board may approve a development plan to be completed in stages. ~~The Board of Appeals~~Planning Board may grant approval limited to each such stage of development. Each stage shall conform to the standards of this Section and each shall be capable of independent existence without the completion of succeeding stages.
 - b. The development plan shall consist of those plans and other representations, tables, covenants, restrictions and conditions as may be determined by the ~~Board of Appeals~~Planning Board. Such development plan as approved by the ~~Board of Appeals~~Planning Board and bearing the signature of the Chairman of the ~~Board of Appeals~~Planning Board shall be retained by the ~~Board of Appeals~~Planning Board, and copies of such development plan bearing the signature of the Chairman of the ~~Board of Appeals~~Planning Board shall forthwith, upon approval, be filed by the Board with the Town Clerk, the Planning Board and the Building Commissioner. The foregoing requirements are in addition to and not in substitution for any applicable provision of statute. Upon the approval of a development plan, the ~~Board of Appeals~~Planning Board shall issue to the landowner a notice, certified by the Chairman or Clerk, containing the name and address of the landowner, identifying the land affected and stating that approval has been granted which is set forth in the office of the Town Clerk. Such notice shall be recorded in the Plymouth County Registry of Deeds within ninety (90) days of the date of the ~~Board of Appeals~~Planning Board' decision. If such notice is not recorded within such ninety (90) days, such approval shall be void.
 - c. No building or use permit shall be issued with respect to any building in any town house, garden apartment or apartment house development except in specific compliance with the approved filed development plan.
 - d. In order to insure compliance with the approved development plan, the developer shall cause the author or authors of the plan (i.e., designer, architect, engineer, site planner, etc.) or their successors to supervise and inspect the construction prior to inspections carried out by the Town.
 - e. No change in content in the approved development plan shall be effective until such change shall have been approved by the ~~Board of Appeals~~Planning Board and the change shall have been filed as provided in subparagraph (b) above.
- 5. Affordable Units
 - a. All Residential Multi-Family Developments, as defined in this Section IV-E shall include Low or Moderate Income Housing as defined in Section IV-D, provided that the minimum specifications shall be as set forth herein. With projects with six or less dwelling units per acre, at least ten percent (10%) of such units shall be Low and Moderate Income Housing. For projects with more than six dwelling units per acre, at least fifteen (15%) of such units shall be Low or Moderate

Income Housing. In the event such percentage results in a fractional number, such number shall be rounded up.

- b. Any Town House dwelling unit intended as Low or Moderate Income Housing shall have a minimum gross floor area of 1200 square feet. Any dwelling unit in a Garden Apartment or Apartment House development intended as Low or Moderate Income Housing shall have the minimum square footage set forth in subsection 1.h hereof.
- c. The number of studio, one, two, or three bedroom Low and Moderate Income dwelling units shall be in direct proportion to the such dwelling rate market units within the development (e.g., if 20% of the market rate dwelling units are two bedrooms, then 20% of the Low and Moderate Income Housing dwelling units must be two bedrooms).
- d. Low or Moderate income Housing
 - i. shall not be segregated on the site
 - ii. shall be designed in the same architectural style and constructed with building materials comparable to any market dwelling units constructed on the site, and
 - iii. shall be constructed simultaneously and in the same proportion as the construction of market rate dwelling units in the development; and
- e. It shall be a condition of the approval of a Special Permit that the procedure for the sale or rental of the Low or Moderate Income Housing shall be in writing and approved by the Hingham Housing Authority (or other such board or authority granted jurisdiction over affordable housing units by the Town) prior to the issuance of a building permit for the site. To the extent permitted by applicable law, preference shall be given in the sale or rental of Low and Moderate Income Housing units to
 - i. persons currently residing in the Town for at least 24 consecutive months and
 - ii. persons who have previously resided in the Town for at least ten (10) years and
 - iii. persons who are currently employed by the Town for at least 24 consecutive months for a minimum of twenty (20) hours per week.

The applicant shall cooperate in all respects, at applicant's sole cost and expense, with any Local Initiative Program application to be filed by the Town in connection with such development and such cooperation shall be a condition to the issuance of any certificate of occupancy for any dwelling unit within the development.

Warrant Article
Item 8(d)

IV-F Residential Multi-Unit Development in Residence District D

1. A Special Permit A2 for town house exception shall be subject to the following conditions:
 - a. Prior to the submission of an application for a Special Permit A2 from the ~~Board of Appeals~~Planning Board, the applicant shall submit to the Planning Board a development plan of the parcel of land which is to be the subject matter of such application.
 - b. Said parcel of land shall contain a minimum of 20 acres and shall be located in Residence District D.
 - c. Development of said parcel shall be subject to the provisions of Section I-I, Site Plan Review.
 - d. Yard dimensions, area and height requirements shall be as required for town houses in Section IV-A.
 - e. All utilities shall be underground.
 - f. Except as provided in subsection (j) below, the maximum number of dwelling units that may be permitted on the parcel by grant of Special Permit shall be

determined by the ~~Board of Appeals~~Planning Board in accordance with the following formula:

D = (A - W) times 0.9;
D = The maximum number of dwelling units;
A = The number of acres in the parcel;
W = The number of acres of wet areas
(defined as water areas and other land in either of the following categories:

- i. All lands within the Flood Plain and Watershed Protection District; and,
 - ii. All lands being wetlands as defined by the Wetlands Protection Act, Chapter 131, Section 40, Massachusetts General Laws.)
- g. Any development hereunder shall be subject to and must comply with the provision of Section IV-E of this By-Law, except that the requirement of Section IV-E, 1 (j) may be waived by the ~~Board of Appeals~~Planning Board if it makes the following determination:
- i. that no part of the parcel abuts a sanitary sewer line of sufficient capacity to serve the parcel; and,
 - ii. that the parcel's subsurface characteristics are sufficient to absorb waste generated by the proposed development on the parcel without material ecological degradation. The ~~Board of Appeals~~Planning Board, as part of the application, may require the submission of such studies and reports relating to this issue, bearing such certification by a professional engineer, and in such form as may be satisfactory to it.
- h. No dwelling unit shall be erected or maintained, and except for reasonable common access way or ways to the parcel, no land may be paved within a strip of land one hundred (100) feet wide along then existing public ways, parks, streams or rivers upon which said parcel abuts nor along the property line of said parcel.
- i. No dwelling unit shall contain more than three bedrooms, and no more than 15% of the maximum number of dwelling units permitted on said parcel shall contain three bedrooms.
- j. The ~~Board of Appeals~~Planning Board, if so requested in the application may, but is not obligated to, permit an increase of one or more additional dwelling units on said parcel to the maximum extent stated below, for the reasons and in the manner hereinafter provided, and upon showing to the ~~Board's~~Planning Board's satisfaction that the particular project, (including such additional units as requested in accordance with this subsection (j)), is of exceptional environmental economic, architectural and aesthetic benefit to the Town, and permits the municipal services without imposing an increased financial burden on its citizens, and so long as all of the following conditions, safeguards and limitations are met and fulfilled.
- i. Inclusive of the increase of one or more additional dwelling units, as provided in this subsection (j), the total number of dwelling units on the parcel shall not exceed 1.2 times the number of acres in the parcel minus the number of acres of wet areas as defined in Section IV-F, 1 (f) hereof. In the event that application of this formula results in a figure which contains a fraction, then the maximum number of dwelling units permitted shall be the closest whole number to the figure obtained.
 - ii. Any additional dwelling unit or units shall be under the same character as the units permitted under subsection (f) above.
 - iii. Without limitation upon the power of the ~~Board of Appeals~~Planning Board provided under the Massachusetts General Laws or elsewhere in this By-Law, the power to condition any approval of an increase of one or more additional

- dwelling units up to the maximum number allowed under subsection (j) (i) hereof may be conditioned upon any or all of the following:
- a. the submission of the reports, studies and other data referred to in subsection (j) (iii) above, in the form and substance and with the certification and verification as required by the ~~Board~~Planning Board;
 - b. completion of the project in accordance with the plans and specifications submitted to and approved by the ~~Board~~Planning Board, except for any non-material deviation; and
 - c. execution, delivery and recording of such covenants, agreements and instruments running with the land and binding upon the owner of the parcel, its legal representative, successors, heirs and assigns, and enforceable by the Town, as the ~~Board of Appeals~~Planning Board may require, and in form and substance satisfactory to it, in order to insure adherence to the development plan, to assure the continued compliance with the terms and conditions of the Special Permit issued hereunder, to insure maintenance of the project throughout its useful life, and, in the case of a condominium project, the execution, delivery and recording of condominium documents in form and substance satisfactory to the ~~Board of Appeals~~Planning Board.
- k. To the extent that a specific provision of this Section IV-F, 1 is in conflict with a provision of Section IV-E, this Section IV-F, 1 shall control.
- l. In addition to the requirements of Sections IV-F, 1 (a), IV-E and I-I, any application pursuant to this Section IV-F shall include the following:
- i. detailed plans for the project, including, without limiting the generality of the foregoing, plans showing all structures and improvements on the parcel, all ways and utilities serving the same (which plans shall comply with the procedural and substantive Rules and Regulations of the Planning Board), all lot lines, easements and rights of way of record, a model or models, building plans and specifications illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, typical elevations, as well as the general height, bulk and appearance of structures, and such other and further documents, studies, reports or data which the ~~Board of Appeals~~Planning Board deems desirable in order to assist it in making its determination;
 - ii. data, satisfactory to the ~~Board of Appeals~~Planning Board, as to the applicant's financial and professional capacity to complete the project in accordance with the plans and specifications, and the applicant's capacity to maintain the project throughout its useful life;
 - iii. in the event that the application seeks waiver of the requirement of Section IV-E, 1 (j), studies and reports relating to the capacity of the parcel to absorb waste generated by the parcel without material ecological degradation, bearing such certification by a registered professional engineer and in such form as may be satisfactory to the ~~Board of Appeals~~Planning Board;
 - iv. traffic and/or utility reports or studies containing such professional certification and/or verification as may be required by the ~~Board of Appeals~~Planning Board; and
 - v. any and all other information, documents, studies, reports and similar data with respect to the project which the ~~Board of Appeals~~Planning Board may require, in form acceptable to it, including such financial data and projections as the ~~Board~~Planning Board deems satisfactory, in order that the ~~Board~~Planning Board may make the determinations required under this Section.

2. Open Land

All land shown on a plan for which a Special Permit A2 is granted under this Section IV-F which is not included in building lots or rights-of-way shall be open land.

- a. The total area of open land shall be not less than 10,000 square feet per dwelling unit and shall be in one or more parcels of not less than 40,000 square feet each.
- b. All open land shall have access from a public way.
- c. The amount, ownership and use of open land shall be as required in Section IV-D, 8.

IV-G Mixed-Use Special Permit in Industrial District

Warrant Article
Item 8(e)

1. General

In order to permit a mixture of retail, residential, open space, general commercial, limited industrial and office uses, and a variety of building types, tracts of land within the Industrial District may be developed under a Special Permit A2 granted by the Planning Board of Appeals as herein defined and limited.

2. Special Permit Authority

The ~~Board of Appeals (Board)~~ Planning Board may grant a Special Permit A2 for construction of a mixed-use project in the Industrial District. The Special Permit shall conform to this By-Law and to Massachusetts General Laws Chapter 40A, Section 9 and to regulations which the Board may adopt for carrying out its requirements hereunder.

~~a. Review Board - The Planning Board shall function as a review board to review each proposed mixed-use permit.~~

~~ba.~~ Purpose - The purpose of the mixed-use Special Permit is to provide for a mixture of residential, open space, retail, general commercial and limited industrial uses within an Industrial District in order to foster greater opportunity for the construction of quality developments on large tracts of land by providing flexible guidelines which allow the integration of a variety of land uses and densities in one development, provided that such land usage is shown to be for the public good and:

- i. will improve the physical and aesthetic qualities of the Industrial District and improve and/or reinforce the liveability and aesthetic qualities of the surrounding neighborhood and/or environment, and
- ii. is consistent with the objectives of the Zoning By-Law.

3. Review Procedure for Mixed Use Special Permit Applications

The review procedure for a mixed use Special Permit consists of three steps:

- 1 a pre-application conference,
2. submission by the applicant and review by the Planning Board of a Preliminary Plan for the proposed mixed-use development, and submission by the applicant and review by ~~both the Planning Board and the Board of Appeals~~ of an application and final plan for a mixed-use Special Permit.
 - a. Pre-Application Conference. Prior to the submission of an application for a mixed-use Special Permit, the applicant must confer with the Planning Board to obtain information and guidance before entering into binding commitments or incurring substantial expense in the preparation of plans, surveys, and other data.
 - b. Procedure for Preliminary Plan
 - i. The applicant shall file with the Town Clerk, at least seven (7) days before a regularly scheduled meeting of the Planning Board, the original and one (1) copy of the preliminary plan accompanied by the form entitled "Submission of Preliminary Plan Mixed-Uses". The applicant shall

- iii. existing and proposed lines of streets, ways, utility and all easements, and any public areas within or next to the parcel;
 - iv. the approximate boundary lines of existing and proposed lots with appropriate areas and dimensions;
 - v. the proposed system of drainage, including adjacent existing natural waterways
 - vi. the existing and proposed topography of the site at five foot or smaller contour intervals;
 - vii. existing and proposed buildings, significant structures and proposed open space and proposed site amenities, and proposed circulation patterns; and,
 - viii. an analysis of the natural features of the site, including wetlands, flood plain, slopes over 10%, soil conditions and other features requested by the Planning Board or required by any regulation of the ~~Board~~Planning Board.
- b. Written materials shall include the following:
- i. a description of the proposed mixed-use development, showing the planning objectives and the character of the development to be achieved through the mixed-use Special Permit;
 - ii. a description of the neighborhood in which the parcel lies, including utilities and other public facilities and the general impact of the proposed mixed use upon them; and,
 - iii. a summary of environmental concerns.
5. Submission of Final Plan
- a. The applicant shall file the original application for a mixed use Special Permit and the original of the final plan (which plan shall comply with the substantive Rules and Regulations of the Planning Board), together with one (1) copy of those materials, with the Town Clerk. The applicant shall also submit to the Planning Board and to those boards and agencies set forth in subparagraph 3 (b) (iii) of this Section at the time the application is filed with the Town Clerk, a copy of the application and the final plan. The applicant shall also submit an application for site plan review under Section I-I of this By-Law.
 - b. The applicant shall file with the Town Clerk and submit to the Planning Board a transmittal letter certifying that it has forwarded copies of the final plan to the boards and agencies as provided.
 - c. The Town boards and agencies receiving copies of the final plan shall submit to the Planning Board written recommendations on the application and final plan within 30 days of the filing of the transmittal letter certifying that copies of the final plan have been forwarded. Failure to report to the Planning Board within such 30 days shall be deemed lack of objection to the application.
 - d. The applicant is encouraged to meet with the Town boards and agencies receiving copies of the final plan during the review period.
 - e. ~~Intentionally Omitted. Within 50 days of the filing of the final plan with the Town Clerk, the Planning Board shall submit to the Board, accompanied by the written recommendations of the other Town boards and agencies described in subparagraph 3 (b) (iii), a written report discussing the consistency of the proposed development with paragraph 2 (b) and the Rules and Regulations of the Planning Board. Copies of such written report shall also be mailed to the applicant and filed with the Town Clerk at the time it is submitted to the Board. Failure by the Planning Board to file such written report with the Town Clerk within 50 days shall be deemed a finding that the final plans are consistent with the By-Law.~~
 - f. The ~~Board~~Planning Board upon receipt of the report of the Planning Board, but, in any case, within 65 days of the filing of the final plan with the Town Clerk, shall hold a public hearing, notice of which shall be given in the manner and to the parties provided in Section I-D (3) of this By-Law and Massachusetts General

Laws Chapter 40A, Section 11, and to any other property owners deemed by the Planning Board to be affected thereby.

- g. The BoardPlanning Board shall, within 90 days following the public hearing, issue a written decision setting forth the reason or reasons for its decision or actions. Such written decision may provide that the application is approved as submitted, is approved subject to modifications or conditions, or is denied. A copy of the BoardPlanning Board's decision shall be filed within fourteen days with the Town Clerk and shall be mailed forthwith to the applicant. Failure by the BoardPlanning Board to issue a written decision taking final action on the application within 90 days following the public hearing shall be deemed to be a grant of the application and the Town Clerk shall issue forthwith, upon request, a certificate of such failure to act.
- h. Approval of a Special Permit for a mixed-use shall require a unanimous vote of the BoardPlanning Board.
- i. The final plan, as approved by the BoardPlanning Board, shall be filed with the Town Clerk and recorded with the Plymouth Registry of Deeds or the Plymouth Registry District of the Land Court, as appropriate.
- j. If the application is denied, the developer shall not submit an application for substantially the same project for two years, except as provided under Massachusetts General Laws Chapter 40A, Section 16.
- k. Special Permits granted under this Section shall lapse in two years, excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has not been begun. The BoardPlanning Board may grant an extension for good cause after a hearing, as provided in Massachusetts General Laws Chapter 40A, Section 11, and shall grant an extension if the delay has been caused by the need to seek other permits related to the development.
- l. No construction or reconstruction except as shown on the recorded final plan, or as provided in Section 12 hereof Amendments, shall occur without a further submission of plans to the BoardPlanning Board; and a notation to this effect shall appear upon the recorded final plan and upon deeds to any property within the mixed-use parcel.

Following filing with the Hingham Town Clerk and recording with the Plymouth Registry District, a final plan which has been approved pursuant to the provisions of this By-Law shall be deemed to run with the land, as provided in this Section of the By-Law.

6. Contents of Final Plan

An application for a mixed-use Special Permit and a final plan (hereafter a final plan application) shall include an application for a mixed-use Special Permit under Massachusetts General Laws Chapter 40A and this By-Law, a site plan as specified in Section I-G of this By-Law, a final plan as specified in paragraph (a) below, and narrative materials as provided in paragraph (b) below. Plans submitted to the BoardPlanning Board pursuant to Section I-I of this By-Law, where applicable, as part of the site plan review shall be sufficient for submission under this subsection 6.

- a. Final plans shall include the following:
 - i. a scale of one inch equals forty feet unless another scale is requested and found suitable by the Planning Board;
 - ii. preparation by and bearing the seals of an appropriate registered professional engineer, registered architect, registered land surveyor, and registered landscape architect;
 - iii. the registered land surveyor indicated on the final plan shall certify the accuracy of the location of the buildings, setback and all other required dimensions, elevations and measurements;

- iv. a utilities and drainage plan prepared and stamped by a registered professional engineer;
- v. the scale, date, and north arrow;
- vi. lot numbers, dimensions of lots in feet, size of lots in square feet, and width of abutting streets and ways;
- vii. all easements within the lot and abutting thereon;
- viii. the location of buildings existing or proposed for the development, which shall be prepared by and bear the seal of a registered architect as provided in subparagraph (ii), including the total square footage and dimensions of all buildings, all building elevations and floor plans, and perspective renderings. Further, the depiction of materials and colors to be used shall be required;
- ix. the location of existing wetlands, water bodies, wells, 100-year flood plain elevation, and other natural features requested by the Planning Board in their written report on the preliminary plan;
- x. the distance of existing and proposed buildings from the lot lines and the distance between buildings on the same lot;
- xi. percent of the building lot coverage;
- xii. average finished grade of each building at the base of the building;
- xiii. the elevation above average finished grade of the floor and ceiling of the lowest floor of each building;
- xiv. existing and proposed contour lines at two-foot intervals;
- xv. the uses proposed for the mixed-use development by building or part thereof, including proposed open space, recreation areas, or other amenities;
- xvi. proposed provisions for parking;
- xvii. height of all buildings, above average finished grade of abutting streets;
- xviii. a landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size and species of plantings; and,
- xix. a model or models illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, typical elevation as well as the general height, bulk and appearance of structures.
- b. Narrative information concerning the development's impact on the community shall be provided to include, at a minimum, the following:
 - i. a description of the proposed mixed-use development, showing the planning objectives and the character of the development to be achieved through the mixed-use Special Permit;
 - ii. a parking and traffic plan to be prepared by a traffic engineer. The traffic plan shall include information on the type and number of vehicles generated on average and peak periods of uses, the impact on traffic intersections, and major roads servicing the project area. The parking plan shall comply with Section V-A of the By-Law;
 - iii. a description of the neighborhood in which the tract lies and the impact of the development on the neighborhood and the community. Such description shall include information concerning the impact to local schools and school districts, the local tax base, housing supply, sewer, water, and other utility systems, and other public facilities. When so requested by the BoardPlanning Board's written report, other impact information shall be provided; and,
 - iv. evidence of ownership or interest in the land for which the Special Permit is sought.

7. Minimum Requirements

The mixed-use Special Permit shall be subject to the following conditions, and the BoardPlanning Board of Appeals shall make a determination that the project meets the requirements of Massachusetts General Laws Chapter 40A, Section 9 and this mixed-use By-Law as to all the following conditions:

- a. the mixed use is consistent with the purpose set out in paragraph 2 (b) of this Section of the By-Law;
- b. the mixed use has received site plan approval as described in Section I-G of the By-Law;
- c. execution, delivery and recording of such covenants, agreements and instruments running with the land and binding on the owner of the parcel, its legal representative, successors, heirs and assigns, and enforceable by the Town, as the Board/Planning Board may require, and in form and substance satisfactory to it, in order to insure adherence to the terms of the Special Permit issued hereunder;
- d. the prior approval of detailed plans for the project including, without limiting the generality of the foregoing, plans showing all structures and improvements on the parcel, all ways and utilities serving the same (which plans shall comply with the procedural and substantive Rules and Regulations of the Planning Board), all lot lines, easements and rights of way of record, a model or models, building plans and specifications illustrating preliminary landscaping and architectural design, showing types, location and layout of buildings, typical elevations, as well as the general height, bulk and appearance of structures, and such other and further documents, studies, reports or data which the Board/Planning Board deems desirable in order to assist it in making its determination;
- e. the Board/Planning Board may, in appropriate cases, impose dimensional and setback requirements in addition to those required by this By-Law; and
- f. the Board/Planning Board may, in appropriate cases, impose a requirement that a motor vehicular and pedestrian easement for access and egress be provided from a street, road or other way over which the public has access, to the navigable waters bordering the tract of land.

8. Permitted Uses and Intensity of Use

- a. Residential - Commercial Option
 - i. Retail uses as allowed by paragraph 8 (c) shall not exceed 6% of the total allowable project square footage
 - ii. Residential use as allowed by paragraph 8 (c) shall not exceed 15% of the total allowable project square footage. Further, the number of three-bedroom units shall not exceed 15% of the total number of units constructed. No residential units with over three bedrooms will be allowed in a mixed-use project.
 - iii. General commercial as allowed by paragraph 8 (c) shall comprise 79% or less of the total allowable project square footage.
 - iv. Limited industrial use as allowed by paragraph 8 (c) shall not exceed 20% of the total allowable project square footage. Further, for each square foot of limited industrial space developed, there shall be a reduction of one square foot of allowable general commercial activities.
- b. Commercial Option
 - i. Retail uses as allowed by paragraph 8 (c) shall not exceed 6% of the total allowable project square footage.
 - ii. General commercial and limited industrial uses as allowed by paragraph 8 (c) may comprise up to 100% of total allowable project square footage. The specific mixture of general commercial and limited industrial uses and square footages shall be the prerogative of the developer, subject to design and site plan review powers accorded to the Board of Appeals/Planning Board.
- c. Permitted Uses
 - i. Residential:
Residential units, free standing or attached, are a permitted use; further, residential units may be allowed as part of mixed-use buildings.
 - ii. Retail:

- Building materials and hardware
- General merchandise
- Food stores and bakeries
- Liquor stores
- Automotive, marine craft and aircraft accessories
- Apparel and accessories
- Furniture, home furnishings and home appliances
- Eating and drinking establishments
- Books and stationery
- Drug stores
- iii. General Commercial:
 - Dry goods and apparel (wholesale)
 - Electrical goods (wholesale)
 - Hardware, plumbing, heating and equipment supplies (wholesale)
 - Professional equipment and supplies (wholesale)
 - Service establishments, equipment and supplies (wholesale)
 - Drugs and allied products (wholesale)
 - Tobacco and tobacco products (wholesale)
 - Beer, wine, and distilled alcoholic beverages (wholesale)
 - Paper and paper products (wholesale)
 - Furniture and home furnishings (wholesale)
 - Commercial fishing
 - General business office space
 - Laundering establishments
 - Personal services establishments
 - Research, development and testing services
 - Equipment rental services
 - Medical and dental health services, excluding those uses enumerated in paragraph 3.8 of Section III-A, Schedule of Uses
 - Hotels, botels, and motels: are permitted as part of an originally approved final plan. A change in use from any other allowed use to a hotel, motel or motel requires a Special Permit from the ~~Board~~Planning Board. At a minimum, the applicant must show that the proposed new use meets all parking requirements and is consistent with the remaining land uses in the mixed-use.
 - Museums
 - Theaters and public assembly
 - Sales of marine craft and aircraft
 - Marinas including storage, sales and service of marine craft
 - Sports facilities, clubs, and similar activities
- iv. Limited Industrial:
 - Assembly and production
 - General warehousing (non-food items)
 - Apparel manufacture
 - Furniture manufacture
 - Professional, scientific and research facilities
- d. Other Uses:
 - i. Accessory uses as defined in Section III-I of the By-Law shall be permitted.
 - ii. Uses not listed in paragraph 8 (c), subparagraphs (i)-(iv) may be permitted as part of the originally approved final plan if, in the judgment of the ~~Board~~Planning Board, the proposed use does not create health, traffic or safety problems for the remainder of the development area and abutter areas and is consistent with the remaining land uses in the mixed-use area.

- iii. Uses not listed in paragraph 8 (c), subparagraphs (i)-(iv), if requested after approval of the final plan, may be permitted as an amendment to the original mixed-use Special Permit as provided in subsection 12.
 - iv. Open space as provided in paragraph 9 (c) below.
9. Dimensional Requirements
- a. Site Area Requirements - A minimum of 25 acres is required within the Industrial District. The parcel shall be contiguous; however, a public transportation, utility, parking area or public ways shall not constitute a boundary or property line in computing the size of the contiguous parcel. The public transport, utility, parking area or public way, however, shall not be used in the calculation of the total project area.
 - b. Floor Area Ratio - Maximum floor to area ratio shall be 1 to 1.
 - c. Usable Open Space - The part or parts of land or structure within a mixed use which are reserved for permanent active or passive recreation use. This space shall exclude parking areas, streets, alleys, required setbacks, waterways, and sidewalks; and shall be open and unobstructed. Trees, plantings, arbors, flagpoles, sculpture, fountains, covered walkways, and similar objects shall not be considered obstructions.

In all mixed-use developments that are new construction, at least 15% of the land shall be set aside as permanent usable open space, available to the project's users or the community. The required open space shall be subject to reasonable restrictions, covenants, and maintenance arrangements, imposed by and legally enforceable by the town to assure access and maintenance as provided in this section.

- d. Height - No building within the mixed-use development shall exceed 40 feet in height above the average finished grade of abutting properties, except that a 55-foot height may be allowed not closer than 200 feet from major highways such as Route 3A and any residential district. Parking facilities within the building shall not be calculated as part of the allowable height. The maximum additional height allowed for parking facilities shall be nine feet, provided that this shall not apply to free standing parking garages.
10. Parking Requirements
- a. In all mixed-use developments adequate off-street parking shall be provided. The BoardPlanning Board and the applicant shall have as a goal, for the purposes of defining adequate off-street parking for the development, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the BoardPlanning Board shall make provision for complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in reductions in the parking requirements set out in this subsection of the By-Law. The parking may be at ground level, underground or in a parking garage. Parking garages can be free standing (in which case 55 feet is the allowed maximum height) or as part of buildings with commercial or residential purposes. If a free standing parking structure is proposed, the spaces must be assigned to specific uses at the time of the submission of the final plan.
 - b. Parking requirements for the mixed-use development shall be in accordance with Section V-A of this By-Law.

11. Signs

V. The prohibitions of Section V-B of this By-Law shall apply to the mixed use district.

12. Amendments - After approval of the mixed use Special Permit by the ~~Board~~Planning Board, the developer may seek amendments to the final plan as approved by the ~~Board~~Planning Board as provided below:
 - a. Minor amendments shall be defined and administered in accordance with regulations adopted by the ~~Board~~Planning Board.
 - b. An application for a major amendment shall be filed with the Town Clerk. The applicant shall also submit copies of the application for a major amendment with the Building Commissioner, and the Planning Board ~~and the Board of Appeals~~. An application for a major amendment shall comply with subsections 5 and 6 of this Section.

SECTION V

Special Regulations

V-A Off-Street Parking Requirements

Warrant Article
Item 9(a)

1. Introduction

Safe and convenient off-street parking shall be provided in all zoning districts in accordance with the requirements of this Section. The parking criteria are directed toward lessening congestion and securing safety from personal injury or property damage on public and private ways and abutting lands in the Town of Hingham, The ~~Zoning Board of Appeals~~Planning Board may grant a Special Permit A2 which provides relief from portions of these regulations, if it finds that it is impractical to meet these standards and that a waiver of these regulations will not result in or worsen parking and traffic problems on the surrounding streets or adversely affect the value of abutting lands and buildings. The ~~Zoning Board of Appeals~~Planning Board may impose appropriate time, use or dimensional conditions on the granting of such a Special Permit. Frequent parking of vehicles on a street adjacent to the premises shall be considered evidence of the inadequacy of the off-street spaces provided.

2. Off-Street Parking Space Requirements

Provision for off-street parking, drives, services, and display and loading areas shall be as specified below. These requirements shall be met for new construction, the enlargement or increase in gross floor area of an existing building, the development of a use not located in a building, or the change from one type of use to another. Parking areas for each land use shall be located on the same parcel unless appropriate relief is granted by the ~~Zoning Board of Appeals~~Planning Board to permit parking on a contiguous parcel. Within Business District A, parking space requirements are reduced by 25%.

- c. When the computation of required parking spaces results in a requirement of a fractional space, any fraction of one-half or more shall require one space, but in any event not less than 1 space.
- d. No space reserved for any person, tenant, activity or purpose (except for spaces reserved for "visitor" or "customers" parking) shall be included to satisfy the parking requirement.

3. Parking Dimension Requirements

The following standard parking dimensions shall govern the design of parking areas. All uses other than single-family residential shall comply with these dimensional regulations, unless relief is granted by the ~~Zoning Board of Appeals~~Planning Board by Special Permit A2, and it is determined that the granting of relief is consistent with the intent of this By-Law and will not increase the likelihood of accident or impair access and circulation.

TABLE OF PARKING DIMENSIONS

Standard Parking Spaces

Width	9 ft.
Length	18 ft. with overhang 20 ft. without overhang

Parallel Parking Spaces

Width	9 ft.
Length	22 ft.

Loading Spaces

Width	12 ft.
Height Clearance	14 ft.

Aisle Width

Parking Angle	45 degree	60 degree	75 degree	90 degree	Parallel
	14 ft.	18 ft.	22 ft.	24 ft.	24 ft.

Minimum Driveway Widths

One way - 12 ft.
Two way - 20 ft.

4. Plan Requirements

When construction or alteration of a parking area is proposed, or a Special Permit A2 is sought, a plan shall be prepared and wet stamped with original signature of a Massachusetts professional civil engineer at a scale of 1" = 20' or 1" = 40' conforming to the design standards presented below and showing the following information:

- a. construction details and the location, size and type of materials for surface paving, drainage facilities, curbing or wheel stops, signs, screening and lighting;
- b. location of all buildings, lot lines, and zoning boundary lines from which the parking lot and loading area must be set back; and
- c. where landscaping is to be provided, the location, species, size and number of plantings.

5. Design Standards

- a. All parking areas designated for a use other than single-family residential shall be designed to provide safe and convenient vehicular and pedestrian access, circulation and maneuverability and pedestrian activity, in accordance with this Section.
- b. All driveways shall be located and designed so as to minimize conflict with traffic on public and private ways and to provide good visibility and sight distance for observation of approaching vehicular or pedestrian traffic.
- c. Loading spaces shall be provided for all commercial activities. Their location, number and length will be reviewed and approved during the site plan review process.
- d. Ample space shall be designated for access to loading and service doors separate from all parking areas and without obstruction or hindrance to travel on streets, driveways and aisles.

religious organization for noncommercial purposes, provided they are to be removed within thirty days of initial display.

6. Prohibited Signs

- a. Any sign not expressly permitted or exempted under this Section, including, without limitation, an "A"-shaped or "V"-shaped sign, a trailer sign and a billboard, is prohibited.
- b. Flashing, moving or animated signs or signs designed to attract attention by a change in light intensity or by repeated motion, which such change or motion is generated by or internal to the sign itself, are prohibited.
- c. Internally illuminated signs are prohibited.
- d. Non-accessory signs promoting commercial activities are prohibited; non-accessory signs promoting non-commercial activities are permitted so long as they comply with the requirements of this Section V-B.

For the purposes of this Section, fund-raising activities by charitable organizations shall not be considered commercial activities.

- e. No sign shall be erected at or near the intersection of any streets, or of a street and driveway, in such manner as to obstruct free and clear vision, or be erected at any location where, by reason of the position, shape, color, illumination or wording, the sign may interfere with, obstruct the view of or be confused with, any authorized traffic sign, signal or device or otherwise constitute a hazard to pedestrian or vehicular traffic because of intensity or direction of illumination.

7. Nonconforming Signs

- a. Any nonconforming sign legally erected prior to the adoption of this By-Law may continue to be maintained; provided, however, that no such sign shall be enlarged, redesigned, or altered except in accordance with the provisions of this By-Law.
- b. The exemption herein granted shall terminate with respect to any sign which (1) shall have been abandoned; (2) shall not have been repaired or properly maintained within sixty (60) days after notice in writing to that effect has been given by the Building Commissioner.

8. Pertinence to Other Laws

All signs shall be subject to any and all other applicable by-laws and regulations of the Town of Hingham and the Commonwealth of Massachusetts. Nothing in this By-Law is intended to limit the exercise of the right of free speech guaranteed under the Constitutions of the United States or the Commonwealth of Massachusetts.

V-C Earth Removal Regulations

Warrant Article
Item 9(b)

1. Permit Required

- a. No soil, loam, sand, gravel, or other earth materials shall be removed from any lot within the Town unless such removal will constitute an exempt operation as hereinafter provided or is done pursuant to a Special Permit A2 therefor issued by the ~~Board of Appeals~~Planning Board.
- b. No Special Permit A2 for removal of earth materials shall be granted unless the Planning Board finds that operations conducted under such permit, subject to the conditions imposed thereby, will not be contrary to the best interests of the Town. For this purpose an operation shall be considered contrary to the best interests of the Town which:

- i. will be injurious or dangerous to the public health or safety;
- ii. will produce noise, dust or other effects observable from adjacent property in amounts seriously objectionable or detrimental to the normal use of adjacent property;
- iii. will result in such use of Town streets so as to cause congestion or hazardous conditions;
- iv. will result in the change in topography and cover which will be disadvantageous to the most appropriate use of the land on which the operation is conducted; or
- v. will have a material adverse effect on the water supply, health or safety of persons living in the neighborhood or on the use of or amenities of adjacent land.

2. Application and Reference to Planning Board

- a. Each application for a Special Permit A2 for earth material removal shall be accompanied by a plan, submitted in triplicate (the exact size and number of copies of which may be indicated by rule of the ~~Board of Appeals~~Planning Board), prepared at the expense of the applicant by a registered land surveyor or civil engineer, showing:
 - i. the existing contours of the land;
 - ii. the contours as proposed after completion of the operation;
 - iii. the proposed lateral support to all adjacent property;
 - iv. the proposed drainage including calculations; and
 - v. other information necessary to indicate the complete physical characteristics of the proposed operation.

3. Conditions of Permit

- a. In granting a Special Permit A2 hereunder the ~~Board of Appeals~~Planning Board shall impose reasonable conditions specially designed to safeguard the neighborhood and the Town; which may include conditions as to:
 - i. method of removal;
 - ii. type and location of temporary structures;
 - iii. hours of operation;
 - iv. routes for transporting the material through the Town;
 - v. area and depth of excavation;
 - vi. distance of excavation to street and lot lines;
 - vii. steepness of slopes excavated;
 - viii. re-establishment of ground levels and grades,
 - ix. provisions for temporary and permanent drainage;
 - x. disposition of boulders and tree stumps;
 - xi. replacement of loam over the area of removal;
 - xii. planting of the area to suitable cover, including shrubs and trees and
 - xiii. cleaning, repair, and/or resurfacing of streets used in removal activities which have been adversely affected by the removal activity.
- b. No permit for removal of earth material shall be issued for a period of more than three (3) years, although such a permit may be renewed for additional periods in the same manner. The ~~Board~~Planning Board shall require a bond or other security to insure compliance with its conditions of authorization, unless, in a particular case, it specifically finds that such security is not warranted and so states in its decision, giving the reasons for its finding.

4. Existing Operations

A sand or gravel removal activity in lawful operation on any premises on March 10, 1941, may continue as an exempt operation unless and until abandoned, or if operating under a prior permit issued by the ~~Board of Appeals~~Planning Board until the expiration thereof. Discontinuance for more than twenty four (24) consecutive months shall be deemed to constitute abandonment. However, unless specifically authorized by such prior permit or by a new permit issued hereunder:

- a. the depth of excavation shall not be extended below the grade of the lowest point excavated on the effective date of this Section of the By-Law;
- b. the total area of excavation shall not be increased by more than fifty (50) percent over its area on said date; and
- c. the amount of material removed per day shall not be increased by more than fifty (50) per cent the daily average for the twelve (12) months preceding said date (or the actual period of operation, if less than twelve months).

5. Other Exceptions

The removal of earth material in any of the following operations shall be an exempt operation:

- a. the removal of less than ten (10) cubic yards of material in the aggregate in any year from any one lot;
- b. the transfer of material from one part of a lot to another part of the same lot; or
- c. the removal of material necessarily excavated in connection with the lawful construction of a building, structure or street, or of a driveway, way, sidewalk, path or other appurtenance incidental to any such building, structure or street; provided that the quantity of the material removed does not exceed that actually displaced by the portion of such building, structure, street, driveway, sidewalk, path or other appurtenance below finished grade.
- d. activities specifically directed by a valid Order of Conditions from the Hingham Conservation Commission.

6. Permits in Proposed Subdivisions

It is the intention of the By-Law that the removal of earth materials in an amount in excess of that permitted in paragraph 5 (a) above from any parcel of land for which a definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in the Town. Consequently, approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of material in excess of ten (10) cubic yards from the premises, even though in connection with the construction of streets shown on the plan unless the material removed is below the finished grade of the constructed street as provided in paragraph 5 (c).

V-D Noise

In an Industrial District, all parties engaged in any industrial activity will provide methods to protect the abutting residential districts from the hazards and nuisances caused by the emission of noises so as to eliminate any such noises which exceed the maximum permitted sound levels defined herein as measured at any point along a district line. Noise shall be measured with an A-scale sound level meter, calibrated in accordance with specifications of the American National Standards Institute (ANSI) or as specified by the Commonwealth of Massachusetts, Department of Environmental Protection, measured over a representative period of time.

TABLE OF MAXIMUM PERMITTED SOUND LEVELS

Sound measured at a lot line abutting
a residential district or school

Continuous Slow-Meter Response
db (A) 55

1. Between the hours of 6:00 P.M. and 9:00 P.M., the permissible sound levels at the boundary of any abutting residential district shall be reduced by five (5) decibels, and between the hours of 9:00 P.M. and 7:00 A.M. the permissible sound levels at the boundary of any abutting residential district shall be reduced by ten (10) decibels.
2. The following sources of noise are exempt from noise level regulations:
 - a. noises of safety signals, warning devices and emergency pressure-relief valves;
 - b. noises emanating from temporary construction and maintenance activities between 7:00 A.M. and 7:00 P.M.; and
 - c. transient noises of vehicular traffic.

V-E Personal Wireless Services

Warrant Article
Item 9(c)

1. Purposes
The purposes of this Section are to allow adequate Personal Wireless Services to be developed while simultaneously preserving the character and appearance of the Town by protecting the scenic, historic, environmental and natural resources of the community, by requiring owners of Towers and Personal Wireless Service Facilities to configure them so as to minimize and mitigate the adverse visual impact of the Towers and Facilities, and by providing standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of Towers and other Personal Wireless Service Facilities.
2. Consistency with Federal Law
This Section V-E is intended to be consistent with the Telecommunications Act of 1996 in that
 - a. it does not prohibit or have the effect of prohibiting the provision of Personal Wireless Services;
 - b. it is not intended to be used to unreasonably discriminate among providers of functionally equivalent Personal Wireless Services;
 - c. it does not regulate Personal Wireless Services on the basis of the environmental effects of radio frequency emissions to the extent that the regulations of Personal Wireless Services and Facilities comply with the FCC's regulations concerning such emissions.
3. Definitions
Act
the Telecommunications Act of 1996
Antenna
a device which is attached to a Tower or an Existing Structure, as permitted hereunder, for transmitting and receiving Personal Wireless Service transmissions
Communication Equipment Shelter
a structure located with a Tower designed principally to enclose equipment used in connection with Personal Wireless Service transmissions
Existing Structure
any building or structure (as defined in Section VI of this By-Law), other than a Tower, but including signs and flagpoles, upon or within which a new Personal Wireless Service Facility or major modification thereof is proposed, including, without limitation, any newly constructed building or structure or any addition to

any existing building or structure upon or within which installation of a Personal Wireless Service Facility is simultaneously proposed

FCC

Federal Communications Commission

Major Modification of an Existing Facility

any change, or proposed change, to an existing or permitted Facility designed to support Personal Wireless Service transmission, receiving and/or relaying antennas and/or equipment

Monopole

a single, self-supporting vertical pole

Personal Wireless Services

commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Act

Personal Wireless Service Facility (also referred to herein as a "Facility")

all equipment (including any repeaters) with which a Personal Wireless Service provider broadcasts and receives the radio-frequency waves which carry their services and all locations of said equipment and any part thereof. This Facility may be sited on a Tower or other structure, as provided herein.

Tower

a lattice structure or structure or framework, or Monopole, that is designed to support Personal Wireless Service transmissions receiving and/or relaying antennas and/or equipment

4. Location

Notwithstanding any language to the contrary in Section III-F, a Personal Wireless Service Facility including a Tower may be erected in an Industrial, Industrial Park or Limited industrial Park zoning district, upon issuance of a Special Permit A2 by the ~~Board of Appeals~~Planning Board.

Within the Industrial, Industrial Park or Limited Industrial Park and Office Park zoning districts, an Antenna may be attached to an Existing Structure upon issuance of a Special Permit A2 by the ~~Board of Appeals~~Planning Board.

In all zoning districts any Personal Wireless Services Facility, other than a Tower, which is completely concealed within a non-residential structure such that no part of the Facility is visible from the exterior of the structure may be installed upon issuance of a Special Permit A2 by the ~~Board of Appeals~~Planning Board.

5. Independent Review

In accordance with Section I-I, upon receipt of an application for a Special Permit under this Section V-E, the Board may hire independent consultants whose services shall be paid for by the Applicant, for the purpose of reviewing the application.

6. Submittal Requirements

An application for a Special Permit A2 under this Section V-E shall include all of the following:

- a. The information required for site plan approval, as set forth in Section I-I, as it may be amended from time to time.
- b. Where the Applicant is not the owner of record, evidence of the Applicant's right to possession and/or control of the premises shall be presented. Without limiting the foregoing, every application must be joined by a Personal Wireless Service provider who will be an immediate user of the proposed Personal Wireless Service Facility.

- c. A narrative description of the proposed Facility including the location and identification of all components together with plans, photographs or other graphic illustrations fairly depicting the physical appearance of the proposed Facility equipment when installed.
- d. A description of the capacity of the Facility, including, in the case of a Tower, the number and types of antennas that it can accommodate and the basis for calculation of capacity. Description of the proposed equipment should include data as to noise, certified by an acoustical engineer, and the beam widths at ground level for the energy outputs from each Antenna sector and degree of down-tilt of each Antenna.
- e. A site plan showing location of the Facility, any proposed Communications Equipment Shelter along with other buildings, lot lines, easements, rights-of-way and also an elevation showing details of the installation.
- f. A map showing all Personal Wireless Service Facilities within ten miles of the proposed installation currently existing, or which the applicant expects to install and/or reasonably knows will be proposed or installed by other Personal Wireless Service providers within the next twenty-four (24) months.
- g. A listing of the state and/or federal permits, licenses or approvals acquired or needing to be acquired for the proposed installation.
- h. A description in both geographic and radio frequency terms of the scope and quality of the service currently available to the Town, the need to be addressed by the Facility and the manner in which the Facility will address the perceived need for service, including, in the case of a Tower, consideration given to other alternatives.
- i. A description of the terms of any co-location agreements between the Applicant and any other Personal Wireless Service provider.

7. Towers

The following requirements apply to all Towers:

- a. At the ~~Board~~Planning Board's discretion, the Applicant shall conduct a balloon or crane test, or such other reasonable equivalent, of the height of the proposed Tower. Upon notice that such a test will be required, the Applicant is responsible for making arrangements with the ~~Board~~Planning Board's staff so that notice of the test may be included within the legal notice for the public hearing. Photographs of the actual test from a suitable number of locations so as to depict the visual impact of the proposed facility on the Town shall be submitted to the ~~Board~~Planning Board at the public hearing.
- b. No new Tower shall be erected if there is technically suitable space available on an existing Tower within the geographic area that the proposed Tower is to serve. The Applicant shall make reasonable accommodation and shall agree to rent or lease space on the Tower, under the terms of a fair-market lease, without discrimination to other Personal Wireless Service providers.
- c. Tower height shall not exceed one hundred (100) feet. The ~~Board of Appeals~~Planning Board may waive this restriction within the Special Permit A2 to allow for co-location which will reduce the need for other Facilities.
- d. A Tower shall not be erected nearer to any property line than a distance equal to the vertical height of the Tower (inclusive of any appurtenant device), measured at the mean finished grade of the Tower base.
- e. Existing on-site vegetation shall be preserved to the maximum extent practicable. The ~~Board~~Planning Board may require the planting of screening vegetation around the perimeter of the proposed site and around Communication Equipment Shelters and any other proposed buildings.

- f. The Tower shall minimize, to the extent feasible, adverse visual effects on the environment. The ~~Board of Appeals~~Planning Board may impose reasonable conditions to ensure this result, including painting and lighting standards. Any Communication Equipment Shelter or accessory building for support of communication equipment, as well as any fencing installed to control access to it, shall be designed to be architecturally similar and compatible with the surrounding area and, whenever feasible, structures shall be constructed underground.
- g. To the extent feasible, all network interconnections from the Personal Wireless Services Facility shall be via land lines.
- h. The area surrounding the Personal Wireless Service Facility and accessory buildings shall be completely secure from trespass or vandalism. A sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the Facility's owner and a 24-hour emergency telephone number.
- i. Traffic associated with the Tower and accessory facilities shall not adversely affect abutting ways.
- j. All unused Towers or parts thereof which have not been used for two years shall be dismantled and removed at the owner's expense. The ~~Board of Appeals~~Planning Board may require that the proper dismantling and removal of a Tower be secured by a bond or other form of security sufficient in the opinion of the ~~Board~~Planning Board to secure performance under this subsection (j).
- k. No commercial signage or advertising may be affixed to any Tower.
- l. Unless an earlier expiration date is specified by the ~~Board of Appeals~~Planning Board in the special permit, all special permits issued under this subsection 7 shall expire automatically five years from the date of issuance. Prior to expiration the Applicant may apply for successive five-year renewals, subject to the public hearing process. In determining whether the special permit shall be renewed, the ~~Board~~Planning Board shall take into consideration whether there then exist any structures and/or technology available to the Applicant which would enable the Applicant to provide functionally-equivalent services in a less intrusive manner.

8. Personal Wireless Service Facilities on Existing Structures

The following requirements apply to all Personal Wireless Facilities on Existing Structures:

- a. Antennas and related equipment shall be camouflaged, that is, disguised, shielded, hidden or made to appear as an architectural component of the structure.
- b. Facade-mounted Antennas shall not extend above the face of any wall or exterior surface of the Existing Structure.
- c. Roof-mounted Personal Wireless Service Facilities may be permitted on buildings in accordance with the following table:

Height of Building	Maximum Height of Facility above Highest Point of Roof	Required Setback from Edge of Roof or Building
up to 15 feet	8 feet height, including Antenna	1 foot for every foot of equipment
15-36 feet	10 feet height, including Antenna	1 foot for every foot of equipment
More than 36 feet	12 feet, or 20% of building height, whichever is greater	½ foot for every foot of equipment height, including Antenna

9. Personal Wireless Service Facilities Within Existing Structures
 - a. All Facilities shall be concealed, that is, entirely contained within an Existing Structure such that no part of the Facility, including the Antenna, is visible from the exterior of the structure.
10. Additional Requirements
 - a. The installation of Towers and Personal Wireless Service Facilities shall avoid the removal or disruption of historic resources on and off-site.
 - b. There shall be no illumination of the Towers or Personal Wireless Service Facilities except as required by state and federal law.
 - c. The Personal Wireless Service provider shall continuously insure its Tower and/or Personal Wireless Service Facilities against damages to persons or property in an amount established by the ~~Board~~Planning Board based upon the nature and extent of the proposed Facility. On an annual basis, the Personal Wireless Service provider shall provide a Certificate of Insurance, in which the Town shall be specifically listed as an additional insured, to the Town Building Commissioner.
 - d. Towers and Personal Wireless Service Facilities shall be installed, erected, maintained and used in compliance with all applicable federal and state laws and regulations.
 - e. All Personal Wireless Service providers shall monitor emissions annually and file a written statement annually with the Town Building Commissioner stating that the Facility is in compliance with any applicable laws and government regulations including, but not limited to, those of the Federal Communications Commission and the Federal Aviation Administration. If the Facility is not in compliance with said laws and regulations, the Personal Wireless Service provider shall come into compliance with said laws and regulations within fifteen (15) days of the date of any such non-compliance or cease all Personal Wireless Service operations until such time as said Personal Wireless Service provider comes into full compliance with all applicable laws and regulations. Such statement shall be filed with the application and thereafter by February 28 of each year. The data which form the basis of the statement shall be provided to the Town at no cost to the Town upon the request of the Town Building Commissioner.
 - f. Towers and/or Personal Wireless Service Facilities must at all times be maintained in good and safe condition. The Personal Wireless Service provider shall arrange for a professional structural engineer licensed in Massachusetts to review the Tower and/or Personal Wireless Service Facilities and any accessory buildings every five (5) years to certify these structures and Facilities are in sound condition. A report of the engineer's findings shall be filed with the Town Building Commissioner at the completion of construction and by February 28, of the fifth year of operation of the Facility. All costs for the inspection shall be borne by the Applicant. Should the engineer deem the structure or Facility not to be sound, the owner of the Facility shall submit to the Town, within ten (10) business days, a plan to remedy the structural defect(s). Upon approval of the plan by the Building Commissioner, the remediation plan shall be completed as soon as is reasonably possible.
 - g. No Personal Wireless Service Facility shall be installed on or within any single- or multi-unit dwelling or on or within any accessory structure to a residential use in any zoning district.
 - h. All applicable requirements of this Section V-E shall also apply to any Major Modification of an Existing Facility and/or any Major Modification of an Existing Tower.

- i. A Personal Wireless Service Facility shall be permitted only if the Applicant demonstrates that no other existing or proposed facility can, or can reasonably be adapted to, provide adequate coverage and service. An Applicant shall provide all information relative to existing and proposed facilities as may reasonably be requested by the ~~Board of Appeals~~Planning Board.

11. Exemptions

The following types of wireless communications facilities are exempt from this Section V-E:

- a. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that
 - i. the tower is not used or licensed for any commercial purpose.
- b. Personal Wireless Facilities Service solely providing safety or emergency services for any federal, state or municipal department.

V-F Adult Uses

Warrant Article
Item 9(d)

1. Purpose

It is the purpose and intent of this By-Law to regulate adult entertainment businesses through the Special Permit process. Since the effects of adult uses on the surrounding community in terms of crime, effects upon children and family life, property values and quality of life are well documented, it is the intention of this By-Law to assure content-neutral regulation of these activities for the general health and welfare of the inhabitants of the Town.

The provisions of this By-Law have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually-oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, or of denying rights that individuals may have to such matter or material. Further, it is neither the intent nor the effect of this By-Law to legalize the distribution of such matter or material. Massachusetts General Laws Chapter 40A, Section 9A, states that a municipality may limit the extent to which adult entertainment is allowed in a community but cannot prohibit adult entertainment from its boundaries.

Definitions

Adult Bookstore or Paraphernalia Store

an establishment and/or business which has, as a substantial or significant part of its stock in trade, books, magazines, or other devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity or their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws Chapter 272, Section 31.

Adult Live Entertainment Establishment

an establishment offering performances by men or women engaging in sexual conduct or display of nudity as defined in Massachusetts General Laws Chapter 272, Section 31.

Adult Motion Picture Theater

an establishment used for the purpose of presenting visual material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in Massachusetts General Laws Chapter 272, Section 31.

material which contains sexually-explicit graphics or sexually-explicit text is to be visible to the public from any private or public way or walkway.

- h. ~~The Planning Board shall hold a public hearing, advertised not more than one time in a newspaper of general circulation in the Town, within 30 days of the filing of the Special Permit application, to make a recommendation to the Board of Appeals relative to drainage, adequate buffer zones, parking, traffic and safety hazards, and any materially adverse impact on the surrounding area.~~
- i. ~~No Special Permit shall be issued under this Section for any establishment which is, in whole or in part, owned or operated by any person who has been convicted of violating Massachusetts General Laws Chapter 119, Section 63 or Massachusetts General Laws Chapter 272, Section 28.~~

V-G Bed & Breakfast Establishment

Warrant Article
Item 9(e) and (f)

1. Purpose
 - a. Under the authority conferred by Massachusetts General Law Chapter 40A, as amended, and every other power and authority thereto pertaining, the Town of Hingham adopts this By-Law for the regulation of Bed & Breakfast establishments in districts zoned as residential and business to achieve the following purposes:
 - (i) to encourage the utilization of homes in residential and business zoned districts which because of their size are costly and/or difficult to maintain as private residences; to provide an economic incentive to maintain and to rehabilitate older, larger residences.
 - (ii) to regulate Bed & Breakfast establishments to insure sensitivity and compatibility with the surrounding neighborhoods in residentially zoned districts through minimizing adverse impacts on neighboring residential uses.
2. Description

A Bed & Breakfast is a single-family dwelling having a mixed use as a home for the residential owner and as an accessory use for guest lodging. The home is to be the primary and legal residence of the owner.
3. Submittal and Review Requirements

A Special Permit A2 shall be required to operate a Bed & Breakfast establishment. As a part of any application for said Special Permit, applicants shall submit, at a minimum, the information required for Site Plan approval.
4. Minimum Requirements
 - a. The Bed & Breakfast establishment and operation shall be located within an existing owner-occupied single family dwelling containing a minimum of four (4) bedrooms as of March 10, 1941.
 - b. Up to three (3) rooms, but not more than one-half (1/2) of the bedrooms as of March 10, 1941, may be dedicated to the Bed & Breakfast establishment. Additionally, not more than forty-five (45%) percent of the entire habitable living space shall be allocated for Bed & Breakfast establishment purposes, and there shall be no more than six (6) guests lodging at the establishment at any one time, and the term of any guest's residence shall not exceed fourteen days.
 - c. The Special Permit authorizing a Bed & Breakfast establishment shall be issued to the owner of the property only and is not transferable to a subsequent property owner.
 - d. The owner of the property shall be responsible for the operation of the property and shall be a resident of the property when the Bed & Breakfast establishment is in operation. The owner shall file an affidavit with the Building Commissioner and Town Clerk on an annual basis in the month of January, stating that the property is the principal residence of the owner and that the owner is in residence at all times that the Bed & Breakfast is being operated. If the affidavit

is not filed, the operation shall cease forthwith, and any Special Permit issued hereunder shall be considered null and void.

- e. The single-family residence in which the Bed & Breakfast operation is located shall be maintained so that the appearance of the building and grounds remain that of a single-family residence.
- f. No cooking facilities, including, but not limited to, stoves, microwave ovens, toaster ovens, and hot plates, shall be available to guests and no meals, except continental breakfast, shall be served to guests. Alcohol shall also be prohibited from being served on the premises to any Bed & Breakfast guest. Additionally, there shall be at least one (1) bathroom solely dedicated to the guests of the Bed & Breakfast establishment.
- g. If the property is not to be served by public water, the applicant shall provide evidence to the ~~Zoning Board of Appeals~~ Planning Board that the proposed use will not have any detrimental impact on any water supply on-site or off-site.
- h. Any septic system shall have the design capacity to support the proposed number of rooms available for rent, as said design capacity is defined by the Hingham Board of Health. Any Certificate of Occupancy shall be signed by the Hingham Board of Health. New Bed & Breakfast establishments served by an existing septic system shall not be granted approval for operation until the Health Department confirms compliance with inspection and/or design requirements as set forth in 310 CMR 15.301; 302; 303; 352; 414 State Environmental Code Title V Minimum Requirements for the Subsurface Disposal of Sanitary Sewage and any applicable local Board of Health rules and regulations.
- i. Exterior lighting shall be so shaded as to prevent illumination off-site. All external lighting, except for demonstrated security needs, shall be extinguished by 10:00 P.M.
- j. No parking shall be located in any required building yard set back. Parking areas shall be screened from adjoining residential properties by a fence or dense plantings, not less than five (5) feet in height. Furthermore, parking shall be prohibited in the front yard(s) as defined in the Hingham Zoning By-Law, Section VI. All parking for a Bed & Breakfast facility shall be located on the premises. There shall be provided two (2) parking spaces for the home owner and one (1) parking space for each room which the Bed & Breakfast establishment has available for rent to guests.

Applicants for Special Permits under the provisions of this By-Law shall provide sketches, drawings or plans necessary to illustrate compliance with the requirements of this By-Law. The Planning Board ~~or Board of Appeals~~ may, at its discretion, require plans to be prepared by registered land surveyors, architects or engineers to illustrate the Special Permit application for the benefit of the Board and other Town officers such as the Building Commissioner and the Health Officer. Illustration required may include but not be limited to parking and driveway plan, room layout, sanitary facilities, and kitchen facilities.

- k. Any sign relating to a Bed & Breakfast operation shall comply with the applicable sign By-Law as set forth in Section V-B. However, all signs for a Bed & Breakfast operation shall be no greater than 1 1/2 x 1 1/2 feet in size.
- l. Prior to the renting of any rooms to guests the applicant shall obtain a Certificate of Occupancy from the Hingham Building Commissioner. The Certificate of Occupancy shall be renewable every year according to the applicable fee schedule established by the Board of Selectmen.

SECTION VI

Warrant Article
Item 10

Definitions

In this By-Law, the following terms shall have the following meanings, unless a contrary meaning is required by the context, or as specifically prescribed, as in Sections III-D, IV-D and V-B of the By-Law.

Accessory Buildings

a building customarily incidental to and located on the same lot with a principal building or on an adjoining lot under the same ownership.

Alteration of drainage patterns

Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater in the area.

Apartment House

a structure utilized wholly for residential dwelling units (and permitted uses accessory thereto) and containing three or more dwelling units.

Automotive Filling Station

building or premises primarily used for retail sale of automotive fuels and lubricants and automotive accessories, and which may include facilities of secondary importance for servicing, lubricating, polishing and inspecting motor vehicles, but not painting thereof by any means.

Basement

that portion of a Building which is partly or completely below Finished Grade. See also definition of Story (above grade).

Body Art

the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: Body Piercing, Tattooing and Cosmetic Tattooing, as defined by the Board of Health. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine of the Commonwealth, such as implants under the skin.

Body Art Establishment

a specified place or premise that has been granted a Permit by the Board of Health, whether public or private, where the practices of body art are performed, whether or not for profit.

Building

an independent structure having a roof supported by columns or walls resting on its own foundation and designed for the shelter, housing, or enclosure of persons, animals, chattels, or property of any kind.

Commercial/Residential Building

a building containing commercial uses on the first floor at ground level and a dwelling unit or dwelling unit(s) above the first floor. A Commercial/Residential Building may also contain commercial uses above the first floor, but in no event shall residential uses be permitted on the first floor, at ground level, or below ground level.

3. causes ground transmitted vibrations which exceed the following levels identified by the International Organization of Standards (ISO) 2631 draft addendum ISO DAD Roman Numeral I (1980) Guide to the Evaluation of Human Exposure to Vibration and Shock in Buildings when measured at a residential building by a three component measuring system capable of measurement of vibration in three mutually perpendicular directions:

	<u>ISO Standard</u>
Daytime and Evening (7:00 A.M.- 9:00 P.M.)	Residential Daytime
Nighttime (9:00 P.M. - 7:00 A.M.)	Residential Nighttime

4. or produces any other measurable air, water or soil pollution not in conformance with the Rules and Regulations of the Department of Environmental Protection of the Commonwealth of Massachusetts for the control of pollution.

Lot

a single area of land in one ownership defined by metes and bounds or boundary lines in a recorded deed or in a recorded plan.

Mean High Water Line

- a. for tidelands, the present mean high tide line as established by the arithmetic mean of the water heights observed at high tide over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch) as determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce; and
- b. for great ponds, rivers and streams, the present arithmetic mean of high water heights observed over a one-year period using the best available data as determined by the Planning or Appeals Boards.

Multi-Unit Dwelling

a building intended and designed to contain three or more dwelling units.

Nonconforming Structure

a structure not in conformance with one or more provisions of this By-Law which was lawfully in existence or was lawfully begun before the first publication of notice of the public hearing concerning amendment of a zoning provision that would render the structure not in compliance, but not including a nonconforming structure resulting from a variance or other relief granted by the ~~Board of Appeals~~Permit Granting Authority.

Nonconforming Use

a use of a building, structure or land not in conformance with one or more provisions of this By-Law which was lawfully in existence or was lawfully begun before the first publication of notice of the public hearing concerning amendment of a zoning provision that would render the use not in compliance, but not including a nonconforming use resulting from a variance or other relief granted by the ~~Board of Appeals~~Permit Granting Authority.

Permit Granting Authority

the Board of Appeals under Section I-D or the Planning Board under Section I-F, as designated in this By-Law.

Planned Unit Development

a development which may include a combination of single-family detached houses, town houses, garden apartments, and limited commercial uses.

Premises

a lot together with all structures, buildings, and uses thereon.

Professional Office

the office of a generally-recognized professional(s), including but not limited to accountants, architects, doctors, engineers, insurance brokers, and lawyers.

Recorded or Of Record

recorded or registered in the Plymouth County Registry of Deeds or a record title to a parcel of land disclosed by any or all pertinent records.

Shoreline

the water side face of waterfront retaining walls.

Single-Family Detached House

a free standing dwelling, excluding house trailers and mobile homes, intended and designed to be occupied by a single household.

Sit-Down Restaurant

an establishment offering prepared food and beverages to be consumed primarily at tables or at a counter on the premises, which serves not more than 40 persons per hour per 1000 square feet of gross floor area at peak service capacity.

Sit-Down Restaurant Service Rate

an anticipated peak service capacity of not more than 40 persons per hour, per 1,000 square feet of gross floor area.

Slope

Amount of deviation of a surface from the horizontal, measured as a numerical ratio, as a percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second number is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope.

Special Permit Granting Authority

the Board of Appeals or the Planning Board as designated in Section I-F, 1 of this By-Law.

Street

a public way or a way having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the proposed use of the land abutting thereon or served thereby.

Story (above grade)

that portion of a Building included between the upper surface of a floor and the upper surface of the floor or roof next above having its finished floor surface entirely above Finished Grade, except that a Basement shall be considered as a Story (above grade) where the finished surface of the floor above the Basement is:

1. more than five feet above the highest elevation of Pre-Construction Grade where it intersects the building perimeter wall at any point; or
2. more than six feet above Grade Plane; or